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In The
Supreme Court of the United States

WILLIAM FREDERICK ROBINSON, PRO SE
ROSA (MARY) ROBINSON, PRO SE
WILLIAM HENRY ROBINSON II, PRO SE

Petitioners

V.

FAKESPACE LABS. INC.

Respondent (s)

PETITION FOR WRIT OF CERTIORARI
To Appeal from the United States Court of Appeals
For the Federal Circuit

BRIEF AND JOINT APPENDIX

Rosa (M) Robinson, Petitioner, Pro Se
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145 pp

QUESTIONS PRESENTED

1. Was the trail court correct when it denied Petitioners discovery, and stayed discovery, and did not enforce the discovery laws before the Hearing on March 7, 2001?
2. Did the trail court err when it granted defendants Motion for Summary Disposition of Noninfringement without ever seeing Petitioners comuter gloves?
3. Did the trail court err when it did not postpone the Hearing on March 7, 2001, after the defendants informed the court at the hearing, that they did not send Petitioners a copy of any of the exhibits they (defendants) used in their defense, during the demonstration at the hearing?
4. Did the trail court deny Petitioners due process?
5. Was it relevant, that Fakespace copied Petitioners, concept, ideas, and invention ?
6. Was conspiracy, fraud, willful infringement, and perjury. relevant ?
7. Did the trail court and district err, when they ruled that unclean hands was not an issue (not relevant)?
8. Did the trail court, and district court, materially, misconstrue the facts?
9. Did the trail court err, when it determined that the Fakspace Pinch Gloves did not literally infringe, or infringe under the doctrine of equivalents?

PARTIES TO THE PROCEEDING

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TABLE OF CONTENTS

QUESTIONS i

PARTIES TO THE PROCEEDINGS ii

TABLE OF CONTENTS iii

TABLE OF AUTHORITIES ..... iv-vi

CITATIONS OF OFFICIAL REPORTS vii

JURISDICTIONAL STATEMENT.....viii

STATEMENT OF RELATED CASES ix

OPINIONS 1

STATEMENT OF THE ISSUES 2

STATEMENT OF MATERIAL FACTS/CASE 3-17

APPEALS COURT, MADE ERRORS, AND

MISCONSTUED THE FACTS..... 18-29

ARGUMENT 29-30

CONCLUSION 30

APPENDIX 1

APPENDIX CONTENTS 2- 5

TABLE OF AUTHORITIES

Patent Law 10-11

"Surprise", A new trail may be ordered on the ground of Prejudical Surprise 12

"Fraud", A trail court may grant a new trail because of fraud committed upon the court 16-17

Changing the Relative Position of the parts of a machine in manufacture, does not avert infringement.....21

Infringement of a Process Patent may occur even when precise idenity does not exist 21

If the Infringer adopts the patented device in its entirety, and in addition, merely adds elements to it, which do not destroy the functions, infringement is not avoided 21

Doctrine of Equivalents Expands Rights 30

Adams v. Mfg. Co 3 Bann & Ard. 11. F. Cas No. 56 .....

Bundy Mfg. Co. v. Caster Sockett Co. 113 Fed. .....

Designer te Hays Microcomputer Products

982f. ed 1527 .25 1241 (Fed.) 1996 .....

Donner v. Sheer Pharmacal Corp.

64 Fed. 217, 233 17 USPQ 117, (CA8) .....

TABLE OF AUTHORITIES - Continued

Hays, 982 F 2d. at 1543, 25 USPQ 2d at 1253 or Butt, at 1572, 11 USPQ .....

Hoelte v. C.M. Kemp Mfg. Co. F2d, 912 Co 6 .....

It is not neccessary that alleged fraud be proven in direct terms,1222 R.C.L. Supp. 1425. Concordia F. Ins. Co. v. Wise (114 Okla. 254,246 pacc 595, American Law, Reports annoted - 45 - A.L.R.....

Malmont Indrustries Inc. V. Renke Manufacturing Co. Ind., 983 F. 2d 1039, 1043, 1044, 25, USPQ 2d, 141, 155 (Fed., Cir. 1993.....

Milgo Electric Corp. v United Business Communications, Inc 623 f, 2d, 645,206, USPQ 481 (10th Cir). cert., denied, 449 U.S. 1066 (208 USPQ 376) 1980 .....

Toledo Rex Spray Co., v. California Chemical Co. 268 F. 201 mod in part 30 F2d 49555 (Ca 6)

1900 Washer Co. et al v Cramer et al. 169 F 269 (CA0 30Patent Claims, 2nd edition, Anthony W. Diller 1 Section 1,2,3 .....

A **Trail** may be granted for improper and prejudicial admission or exclusion of evidence affecting the rights of the parties. Irregularities in the Proceedings, 588::20 Federal Procedure, 2nd edition .....

TABLE OF AUTHORITIES continued

Rule 84, Misconduct .....

s : 608. A court may asses against an attorney expenses incurred as the result of the attorney's clients failure to comply with a discovery order, or expenses which resulted from the failure of the attorney''s clients to perform any of the acts of discovery set up out of FRCP 37

(d) sanctions against attorneys are available under FRCP 26 (g) .....

A Trail may be granted for improper and prejudical admission or exclusion of evidence affecting the rights of the parties. Irregularities in te Proceedings, 588:20 Federal Procedure, 2nd edition .....

CITATIONS OF OFFICIAL REPORTS

The Appeals Court ruled that Fakespace does not Literaly Infringe Petitioners patent, No.4, 613,139, and does not infringe patent No. 4, 613,139 under the Doctrine of Equivalents.

The Appeals Court Denied Petitioners, Petition, for a Rehearing.

The Appeals Court stated that the Trail Court Properly Stayed Discovey.

Trail Court granted Summary Judgement of Non-infringement, Concluding that the Fakespace Pinch Gloves does not literally Infringe Petitioners Patent, and does not Infringe Petitioners Patent under the Doctrine of equivalents.

JURISDICTIONAL STATEMENT

Petitioner has basis for Jurdisdiction in this court, because a Lower Court and District Court ruled on this case.

This Appeal is from an April 7, 2003 Order, of the United States Court Appeals Panel, that was decided on March 5, 2003, granting Fakespace Labs, Inc. Motion for Summary Judgment, of Non-Infringement of U.S. Patent No. 4, 613,139.

Petitioners filed a Petition for a rehearing under Rule 27, with the United States Court of Appeals, on March1 4, 2003, and the Appeals Court denied the Petition for a Rehearing on March 31, 2003

This court has jurisdiction, because this is a Federal patent case, that was heard and ruled on by a Federal court and the Appeals Court.

STATEMENT OF RELATED CASES

To Petitioners knowledge, there have been no other appeals from this civil action or proceeding in the lower court or district court, brought before this, or any other court.

There are no other cases know to Petitioners to be pending in this case or any other court that will directly affect, or be affected by this courts decision in the pending appeal.

OPINIONS AND ORDERS ENTERED

It was the Opinion of the trail court that the Pinch Gloves did not literally infringe Petitioners patent (No. 4,1613,139) under the doctrine of equivalents.

It was the Opinion of the trail court that the Pinch gloves did not infringe Petitioners patent under the doctrine of equivalents.

It was the opinion of the trail court that petitioners presented no evidence that the pinch gloves infringed Petitioners patent.

The trail court stated that Unclean Hands, Perjury, Fraud, and Conspiracy was not an issue (not relevant)

The Court of Appeals upheld the lower courts Opinions, stating that the Fakespace Pinch Gloves did not literally infringe Petitioners gloves, or infringe under the doctrine of equivalents.

It was the Appeals Court Opinion, that, Unclean hands, Perjury, Fraud, and Conspiracy was not an issue.

It was the Opinion of the Appeals Court, that Petitioners presented no evidence that the Fakespace Pinch gloves infringed Petitioners patent.

It was the Opinion of the Appeals Court, that Summary Judgment must be entered against a party who bears no burden of proof at trail if that party fails to show an existence of a genuine issue of material fact on the subject of the motion, and quoted the Cleotex Corp case,. V Cartrett, 477 U. S. 317, 322-23,.

The Appeals Court stated that "they did not believe that the trail court abused its discretion in staying Discovery".

The Appeals Court stated that "the Fakspace Pinch gloves did not have resistors".

STATEMENT OF THE ISSUES

1. Petitioners, could not attend the hearing on March 7, 2001, because William Frederick Robinson, the husband of Peritioner, Rosa, suffred two strokes, a day before the Hearing, and another stroke the day of the hearing.

2. The trail court did not schedule another hearing, after leading petitioners to believe another hearing would be scheduled, after the court received petitioners written response. Petitioners let the court know they would respond in writing only at that time, because they didn't know exactely when they could all appear in court together, because petitioner, William F. Robinson had to get continued care and theraphy.

4. The court stayed discovery, did not enforce the discovery laws,under FRCP 37 (d), Petitioners rights were violated, they did not get due process

5. Prior to the hearing, the defendants did not serve petitioners with any exhibits, or notes, they used in their defense.

6. Fakespace stole/copied Petitioners invention, and is using Petitioners claims in their pinch gloves

7. The trail court and Appeals court stated that unclean hands was not relevant, (not an issue), nor was perjury, fraud and conspiricy.

8. The District Court misconstrued the facts.

9. Whether the two courts properly granted summary judgement of Non-Infringement, concluding that the Fakespace Pinch gloves does not literally infringe Petitioners pantent and does not infringe under the Doctrine of Equivalents.

PETITION FOR A WRIT OF CERTIORARI

Petitioner request that this court hear this case, because this case is of such importance to the public at large, that it requires immediate determination in this court, under 28 U.S.C.s 2101 (e)."

STATEMENT OF MATERIAL FACTS

Petitioners are holders of a United States Patent, for computer gloves (Video Control Gloves, patent No. 4, 613, 139 ('139) that contain resistors. The gloves can be inter-faced and programmed to be used on a computer for work and play, video systems, and the like, by physically touching fingers to thumb.

By concidence, or otherwise the basic technology underlying the concept, though novel when the patent was first applied for in 1984 by petitioners.

Petitioners are seeking justice, and is asking the Supreme Court to reverse the Appeals Court ruling of non-infringement, under the doctrine of equivalents, and is asking if the court will address the issues as to what the trail court and district court deem of what the law is.

The trail court and Appeals court has decided on important questions of what the Federal law is, in patent cases, that should be settled in this court.

Fakespace stole/copied petitioners invention, and has alleged they are not infringeing on Petitioners '139, patent under the doctrine of equivalents, and that they are the first inventors of Virtual Reality electronic computer gloves, that can be inter-faced and programmed, and used on other computer and video systems

Petitioner is making this statement ProSe, to the best of her ability, and may not be able to express herself on paper in legal terms, in respect to how Fakespace is using Petitioner's claims in the Fakespace computer gloves. However, Petitioner have submitted evidence in the Appendix, showing how Fakespace is infringeing their patent, under the doctrine of equivalents, in respect to the placement of Petitioners claimed resistors, and thumb leads, that Fakespace is using in their pinch gloves. After reading this Petition/Statement, Petitioners hope the court will understand what this case was all about. Over the past 7 1/2 years, Petitioners have suffered a tremendous amount of emotional, and mental stress, trying to protect their legal rights, in respect to the things that happened between the petitioners, Fakespace/Attorney Crockett, the trail court, and the district court, that led up to the legal action that petitioners have taken, that caused petitioners to file a Petition for a writ of cerrrtiorari. Petitioners feel that the Supreme Court should hear this case. There is a question of law, as to whether the trail court, and the Appeals Court was correct, in its ruling of non-infringement and/or under the doctrine of equivalents .and there is a question as to whether or not, the unclean hands issue was relevant in this case.

The trail court sent petitioners a **Notice of a Status/ Scheduling Conference,** on October 6, 2000, informiing Petitioners to be at the Status Conference meeting on October 16, at 2:30 P.M. **APP. 22,** Petitioners attended the meeting, and was very intimated by the judge, Nancy Edmunds. At the meeting the judge, Nancy Edmunds, openly showed favortism, favoring the Defendants; and at that time, Petitioners informed Judge Edmunds, that Fakespace still had not given them any discovery.

Without cause, or warning, Judge Nancy Edmunds, stated that Discovery would be stayed until after the summury Motion Hearing, that she scheduled for March 7, 2001. **SEE APP. 23** During the conference, she called a patent attorney expert from her chambers, that she knew, and she more or less, told petitioners to meet with him, at Petitioners own expense, and insinuated it would be in petitioners best interest. After the Status Conference meeting, Petitioners met with the patent expert, that judge Edmunds told them to meet with. At one of the meetings, with the patent expert, after reviewing a sketch of the Fakespace gloves, Petitioners discussed the fact, that Fakespace might have resistor's that is equivalent to Petitioners under the doctrine of equivalents, the expert told Petitioners they would need to persuade the court that discovery is needed before they could fairly respond to a summary judgment motion. Following the last meeting he (expert) had with petitioners, the patent expert sent Petitioners a two page letter. **SEE APP. 24 - 25, letter expert sent, dated, Nov. 29, 2000** Prior to the meetings with the expert, Petitioners had already requested dicovery from Fakespace, and requested discovery after the expert sent Petitioners the letter. Fakespace refused to give Petitioners discovery. The fact is, Fakespace willfully copied petitioners concept and invention. The fact is, William H. Robinson II, invented the computer gloves, when he was 15 years old, with the assistance of his parents, (William F. Robinson, and Rosa Robinson) when he was a sophomore at Cass Technical High School in Detroit. The concept was developed by young William, due to a serious injury to his right hand that left him handicapped

for the duration of his high school years. Because of the injury, young William could not make a fist with his right hand, he could only touch his fingers, to thumb, and flex his fingers a little. The injury prevented young William from writing or using his right

hand, or from operating any traditional joystick control device on any computer, or computer game system, that he had enjoyed playing with his 6 sibblings and friends, rather than not use the computer and or play video games, because he could not hold, or operate the traditional joystick in his right hand, young William thought his problem through, with his parents, and they came up with a device that his disability, notwithstanding, still permitted him to use the computer and play video games.

Young William took a pair of his fathers old cloth work gloves, and other materials from around the house to create the first working virtual reality electronic computer gloves, with resistors, that could be inter-faced and programmed, and adapted to other computers and video systems, for work and play. Petitioners concept is being used by Fakespace Labs. for its intended purpose of controlling computer, and video based activity etc., by touching fingers to thumbs, through hand motions provided by a pair of gloves, (Pinch Gloves) that is made of cloth fabric, and contain resistors in series on each finger and thumb, and is very simmilar to petitioners computer gloves, and functions and operates in the same manner as petitioners gloves. The fact is, Fakespace willfully copied petitioners computer gloves. Petitioners corresponded with Ian McDowell in 1994 and 1995, in reference to his company getting a license to manufacture, or invest in their (petitioners) gloves. The fact is, at that time, Petitioners trusted Ian McDowell, and in good faith, disclosed everything to him, and later disclosed everything to his attorney, K. David Crockett in respect to the operation, and functions of their (Petitioners) electronic gloves, and how the gloves could be interfaced, and programmed to inter-act with other computer and video systems, and how the gloves, could be marketed and sold

In 1995, on behalf of Fakespace, attorney Crocl ett offered to buy Petitioners patent. **APP. 16 -17, copy of statement attorney Crockett, made on an Oppostion, with the Dist, Court of California, dated June 16, 2000, Pg. 2. lines 11 - 12.**

Petitioners refused the offer.

After petitioners refused to sell their patent to Fakespace, Fakespace stated they were not interested in obtaining a license or manufacturing petitioners computer gloves. When Petitioners found out that Fakespace had copied their concept and ideas, and was selling their (Fakespace) gloves for a profit, through mail order, Petitioner, Rosa Robinson contacted Ian McDowell at Fakespace by phone, and sent him two letters. Ian McDowell denied they had copied Petitioners invention, and said that Fakespace was not infringeing on Petitioners patent. Ian McDowell told Rosa Robinson that their computer gloves was different, and that they (Fakespace) had a right to make gloves of their own, he also said that the Fakespace gloves was not a joystick and did not have any resistors, and because of the prior art, they (Fakesace) was not infringeing. The fact is, the prior art was different then Petitioners computer gloves, and did not have resistors, and were not gloves that were inter-faced, and programmed to be used for work and play. Ian McDowell was very convincing, when he told Petitioners their pinch gloves was different, and Fakespace was not infringeing, on Petitioners computer gloves.

Following one of the phone conversations, Ian McDowall sent Rosa Robinson a letter, stating their (Fakespace) gloves did not have any resistors, and because of the prior art, they were not infringing. **App. 48, copy of letter dated October 23, 1995.**

Before any legal action was taken, Petitioners tried to work

something out with Fakespace. Petitioners sent a letter to Mr. Angellillo, President of Fakespace, informing him that Fakespace was infringeing on their (Petitioners) patent. A few months later, Petitioners received a letter from attorney Crockett, informing the petitioners that he was representing Fakespace. The letter stated there was no infringement, that there was no resistors, etc. **APP. 49-50** letter from attorney Crockett dated May 20, 1999

In October 1999, Petitioners filed a complaint ProPer, against Fakespace, in the Third Ciircuit Court, state of Michigan. Fakespace tried to get the case dismissed, by filing a series of frivolous letters, contesting the courts jurisdiction. Fakesspace filled around five letters in less then a month. **APP. 51, 52, 53, 54 & 55, copy of three of the letters dated Dec. 20, 1999, January 5, 2000,** and **January 12, 2000,** At the Summary Motion Hearing for Non-Infringement, on March 7, 2001, Attorney Crockett was not truthful when he testified under oath, that Judge Simmons was surprised to learn that he couldn't hear patent cases, and that it took "us a little bit of time to withdraw ourselves from the state court". **Refer to court transcript (March 7,2001) pg 47,** lines 6-11. **(Hereafter, when referring to testiimony from the March 7, 2001, Hearing, statement wil be, see court transcript, and petitioner, will be referred to, as petitioners, or Rosa Robinson).** After Fakespace was unsuccessful in getting the case dismissed in the Third Circuit Court, Fakespace filed the case in the District Court of California, even though Fakespace knew that Petitioners had already filed the case in Michigan. **SEE APP. 18, 19, & 20, Order, transferring case to Michigan, and SEE APP. 21,** copy of letter from Judge William Alsup, California, U.S. District Judge, dated September 20, 2000.

After Fakespace filed the case in the California District Court, Fakespace tried to get the case dismissed, by filing fraudulent motions, and statements with the District Court of California. One of the false statements Fakespace made on the motion, was that their device was not a joystick, and was not connected to a wire connector, and Fakespace stated their device did not have any resistors.

In 1996 Attorney Crockett conspired with Fakespace and filed a fraudulant patent application with the United States Patent Office. Attorney Crockett was not truthful when he testified under oath at the Hearing on March 7, 2001, that Fakespace had a valid U.S. patent. **Refer to court transcript, pg. 33, lines 17-25 pg. 34, lines 1- 25 and pg. 35, lines 1-23**, and **SEE APP. 57, copy of cover pg. of Fakespace Patent, No. 6, 123, 004**

Ian McDowell of Fakespace, was not truthful, when he, along with Mark T. Bolas, Russell Christen Greul, and James Hackbush, stated to the patent office, on the specification "that they "have invented a new and useful virtual reality glove system. The fact is, it was the Robinson's who had invented the first electronic computer gloves, with resistors, that could be interfaced, and programmed, and used on other computers, and video systems. When attorney Crockett filed the patent application for Fakespace on March 29, 1996, with the U.S. Patent Office, he was well aware of the fact, that the Robinson's had invented the first computer gloves, with resistors, that could be used for work and play. Knowing this, he (attorney Crockett) was not truthful, when he filed the Specification, of Mark T. Bolas Ian McDowall, Russell Mead, Christan Greul, and James Hackbush, stating they "have invented a new and useful glove system. **SEE App. 58, copy of Specification.**

Ian McDowell was not truthful when he stated on the Declaration for Utility Application attorney Crockett filed with the Patent Office, dated August 27, 1996, "that he believed that he was the original, first and sole inventor of the virtual reality gloves". **APP. 59 -60 & 61, copy of Declaration.** On July 5, 1996, Ian McDowell filed a Power of attorney letter with the patent office, asking that all correspondence be sent to attorney Crockett, and that he (Ian McDowell) " declare that all statements made on information and belief are believed to be true", and further willful false statements and the like, are punishable by fine or imprisonment, or both". **APP. 62, copy of letter.** Before Fakespace applied for a patent in 1996, Fakespace put their gloves on the market in 1995, sending out press releases dated May 15, 1995. **APP. 63** copy of press release. Fakespace also published an Installation Guide handbook , dated November 1995, **APP. 64 & 65.** Fakespace made false statements on their patent application, and did not disclose to the patent office that they had copied petitioners computer gloves, and that their computer gloves had previously been published and advertised in a national magazine, and was published in a Fakespace users manual, and had been manufactured and sold for profit, through mail order, prior to Fakespace applying for a patent Application. Fakespace also advertised their computer gloves on the back cover of a national Virtual Reality magazine, from Sept- Oct. 1995, Jan.- Feb. 1996, March -April 1996, and May-June 1996. (Petitioners have copies of the magazines) Patent law is very clear, and states that, "Under 35 U.S.C. 102, a person shall not be entitled to a patent: unless (a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign

company before the invention thereof by the applicant for a patent.

A patent applicant has a duty to the Patent Office to make a full and fair disclosure of all the facts which may affect the patentability of his invention. The acts of commission or omission which have been held to be fraudulent representation to the patent Office include DELIBERATE USE, CONCEALMENT of STATUARATORY BARS, PRIOR USE, SALE and innvention render the patent unenforceable. *Honeywell Inc. v. Sperry Rand Corp. 398 F. Supp. 366 180 USPQ 673 (D) Minn.*

Attorney Crockett was not truthful when he testified under oath at the Summary Motion Hearing, on March 7, 2001, that Fakespace had a valid U.S. Patent, when the trail court judge questioned him about the validity of the Fakespace Patent. **Refer to court transcript, pg. 33, lines 16-25 and page 34, lines 1-21.**

After the Hearing on March 7, 2001, Petitioners had to file objections. When Petitioners filed Objections, Fakespace still had not given Petitioners discovery, or copies of any exhibits they used at the hearing. After the Hearing, petitioners learned that Fakespace was suppose to give them (Petitioners) copies of all the notes and exhibits. Petitioners tried to get get copies of all the exhibits from the trail court, but Fakespace did not file all the exhibits and notes they used in their defense at the hearing. The only exhibit Fakespace filed with the court was a sketch of the pinch gloves. After the hearing, Fakespace still refused discovery to Petitioners. **Refer to court transcript, pg. 8,. lines 17-25, and pg. 9, lines 1-3.** According to the law, Fakespace should have informed, and sent copies of all evidence and exhibits they

would be using at the Hearing on March 7, 2001 to the Petitioners, prior to the hearing, so Petitioners could properly defend themselves, and there would be no surprises. **"Surprise "** a new trail may be ordered on the ground of "Prejudicial Surprise", such as the introduction of unexpected evidence, where the un-fair surprise deprives the party of a fair hearing. **Research,** Federal Procedure, 2nd Edition . It seems, that the trail judge believed just about everything Attorney Crockett, and Ian McDowall said at the hearing, even though both men had a history of making false statements. The law states that, a trail may be granted for improper and prejudicial admission or exclusion of evidence affecting the rights of the parties. **Research,** irregularities in the Proceedings, 58:20, Federal Procedure, 2nd edition. Prior to the Hearing on March 7, 2001, Petitioners requested discovery via-phone, letters, and subpoenas, that had been signed by the court, neither Fakespace or their clients would respect Petitioners Subpoenas. **APP. 66, copy of letter from attorney Crockett, dated August 10, 2000.** and **refer to court transcript, pg. 42, lines, 5-12 and page 47, lines 12-25.** When Petitioners filed objections, Petitioners did not have the schematics or circuity of the Fakespace gloves, in respect to the resistor and computer, Petitioners did not get discovery, the court had stayed discovery, and Fakspace had not sent Petitioners copies of their exhibits they used at the hearing. The only thing Petitioners had was a sketch of the Fakespace gloves that Fakespace had submitted as an exhibit with a motion they filed, that Petitioners showed, and discussed with the patent attorney expert. Petitioners still had not received the file history of Fakespace from the Patent Office. Petitioners filed written oblections to the best of their ability, under the

circumstances, explaining on paper how the Fakespace gloves resistors and gloves function was equivelant to Petitioners under the doctrine of equivalents. Petitioners needed to obtain discovery, prior to the Hearing on March 7, 2001, to try to survive the motion, to show the court, by pointing out evidence, provided through discovery, which might prove that there was a genuine dispute of a material fact, requring a trail to decide the issues.

Petitioners had previously submitted two sketch's to the court, showing it did not make a difference in the function, and operation of the gloves, under the doctrine of equivalents, whether one resistor was used in the finger and thumb leads, or a series of resistors, because both resistors accomplished the same thing. **APP. 67, copy of Sketch.** Petitioners did not have sufficient, factual information in a timely fashion in the form of a technical explanation of the way Fakespace's accused circuitry worked, that infringed Petitioners patent. The only way for Petitioners to oppose the Fakespace Motion was to obtain discovery, from Fakespace or their clients, to show that the Fakespace computer gloves functioned and operated in the same manner as Petitioners, and to show that the circuitry, in respect to the resistors was equivalent to, or is the same as the wire connector, and the resistor in the thumb and finger portions claimed in Petitioners patent, and to show that the resistors in the thumb and fingers was in series with the host computer. At the summary Motion Hearing on March 7, 2001, attorney Crockett was not truthful when he testified under oath insinuating that Fakespace had already given Petitioners discovery, and he was not truthful when he testified that petitioners did not have any computer gloves. **Refer to court transcript pg. 13 lines, 5-10.** The fact is, Fakespace never asked

to see Petitioners computer gloves. Attorney Crockett filed a complaint for Declaratory Judgement, in the U.S. District Court of California, dated Dec. 9, 1999, stating Fakespace Pinch Gloves, does not connect the thumb contacts to ground through a resistor, and that the pinch gloves is not used for providing signals to a joystick. **APP. 68-72, copy of Complaint for Declaratory Judgement, pg. 61, #13, stating that the pinch gloves does not, connect the thumb contacts to ground through a resistor, and the Pinch gloves is not used for providing signals to a control port.** Attorney Crockett was not truthful when he filed a Declaration, on August 30, 2000, in support of the Motion for Summary Judgement, stating that the pinch gloves does incorporate resistors between the thumb electrodes and the connector, and **"that it is impossible to assert the claims of any computer gloves lacking resistors in the thumb leads", APP. 73-75, copy of motion pg. 2, lines 2-8.** Ian McDowall of Fakespace was not truthful when he filed another Declaration, on October 27, 2000, with the United States District Court of Michigan, Declaring that "the pinch gloves do not contain any resistors, and certainly do not have a resistor in series. **APP. 76.** Attorney Crockett was not truthful when he testified at the Hearing under oath, on March 7, 2001, stating "that there can be no infringement because we don't have a resistor, **Refer to court transcript, pg. 38, lines 14-17.** After that statement was made, by attorney Crockett, he stated, "they come back in their reply (meaning Petitioners) with no evidence yet, but argument that there might be a resistor in the computer that controls the gloves that is equivalent". **Refer to court transcript, pg. 38, lines 18-21,** after attorney Crockett made that statement he comes back and tells the judge at the hearing, "now if we look

at the prior art, the prior art had gloves with contacts on the finger tips, connected to a computer, and that computer obvivously has a million resistors in it, we are entitled to have resistors in our computer ". **Refer to court transcript, pg. 38, lines 22-25** and **SEE pg. 39, lines 1-3.**

Attorney Crockett was not truthful, when he testified under oath at the hearing on March 7, 2001, that the pinch gloves had no resistors in series, when the trail judge questioned him about the pinch gloves having resistors in series. **Refer to court transcript, pg. 40, lines 11- 25 and see page 41, lines 1 -7.**

Petitioners want to point out, when depositions was taken for jurisdiction, Petitioners were not aware that the Fakspace Pinch Gloves had resistors on each gloves thumb leads and fingers in series, in line with the computer, when they (petitioners) testtified the pinch gloves had no resistors. Fakespace had refused discovery, and Petitioners did not have the schematics and circuity of the gloves. During that time, petitioners only had a sketch of the pinch gloves.

When Petitioner, Rosa Robinson, told Ian Mcdowall, at Fakespace, that she wanted to purchase a pair of their Pinch Gloves, he told her "the gloves were not on the market".

Rosa Robinson had to purchase the gloves through a third party, that lived in California, because Fakspace would not sell them (petitioners) a pair of their gloves. After petitioners received the gloves, and visually inspected the pinch gloves, it was obbvious to petitiones, that Fakespace had copied their invention. Petitioners did not take the gloves apart. Attorney Crockett testified under oath at the Hearing on March 7, 2001, and admitted, that

their pinch gloves "has replaced either the joystick and the mouse, after he filed motions and declarations, stating, that the pinch gloves was not a joystick. **Refer to court transcript, pg. 20, lines 4-20** At the Hearing on March 7, 2001, attorney Crockett, made false statements he knew not t be true, and statements they could not prove, and attorney Crockett speculated how he thought petitioners computer gloves operated. After attorney Crockett finished testifying how he thought petitioners gloves functioned, he asked the trail judge if "it made sense" **Refer to court transcript, pg. 32, lines 9,10,11,12.**

Fakespace commited perjury upon the court, and prior to the hearing on March 7, 2001, attorney Crockett deliberately filed false statements against peitioners.

A trail court may grant a motion of a new trail because of fraud committed upon the court, Research, Federal Procedure, 2nd Edition 58 : 22. It is not neccessary that the pleadings of alledged fraud be proven in direct terms, stating the facts, from which fraud is implied : **(1)** " If a person who actively aids another person in directly or indirectly infringing a patent, he is liable himself, for the tort of inducement of infringement **(2)** A court may asses against an attorney expenses incured as a result of the attorney's clients failure to comply with a discovery order, or expenses which resulted from the failure to comply with a discovery order, or expenses which resulted from the failure of the attorney's clients to perform any acts of discovery set up out of FRCCP 37 (d) sanctions against attorney's under FRCP (26) (g) (a) violate or attempt to violate the rules of professional misconduct, knowingly assist or induce another to do so, or do so though the acts of another : **(b)** engage in conduct involving dishonesty, fraud deceit,

mis-representation, or violation of the criminal law, where such conduct reflects adversely on the lawyer's honesty or misrepresentation, or violation of the criminal law, where such conduct reflects adversely on the lawyer's honesty or fitness as a lawyer.

(c) engage in concuct that is prejudical to the adminstration of justice.

Lawyers are officers of the courts, subject to the supervisory powes of the courts. In the exercise of those powers, courts have a responsibility to the client, to the profession, and to the public at large to make and enforce rules which promote excellence in the practice of the law, and energize the distinctive rights and obligations of the lawyer client relationship.

Those rules need not aply to others. Attornry Crockett tried to intimidate petitioners, when he sent petitioners a frivilous letter. dated December 20, 1999, asking petitioners to drop the appeal. (petitioners could not find that letter).

Attorney Crockett sent a second intimidating letter, dated January 11, 2000, offering to settle the case with petitioners, if petitioners agreed to no money damages. **APP. 77, copy of letter.**

THE APPEALS COURT MISCONSTRUED THE FACTS

Note ** the page numbers may differ from the page numbers on the original Appeals Panel Statement and Opinion that is in this Appendix. **(Pg. 6-13)** For accuracy, refer to Original Appeals Court Opinion and Statement, decieded March 5, 2003

(1) On page 4, of the Appeals Panel Opinion, and statement, No (3) states that its gloves (Fakespace) do not have a resistor. The fact is, The Fakespace device does have a resistor. It clearly states on the Fakespace Patent No. 6, 128,004, at -7- first paragraph, that the Fakespace gloves, **"is implemented by RESISTER 610, and is connected to each gloves Thumb Leads. APP. 78,** (high lighted in bold print) **copy of statement from Fakespace patent.**

(2) The panel stated on page 5, third paragraph, starting on line 4, that "Summary Judgement must be granted against a party who bears no burden of proof at trail, if that party fails to show no genuine issue of material fact, on the subject of the motion, and the panel cited the Cleotex Corp. V. Cartrett case, 477 U. S. 317. 322-23 91968. **Refer to Appeals panel statement.**

NOTE ** Petitioners questions are,

1. how could petitioners properly defend themselves, when Fakespace refused them discovery? and,

2. the court stayed discovery, and

3. the fact, that Fakespace never served petitioners copies of any

exhibits, they used prior to the Hearing on March 7, 2001, and

4. the fact that Petitioners never got due process. and

5. how could Petitioners defend themselves, or physically show any burden of proof, when they never had a trail, and could not attend the Hearing on March 7, 2001, because Petitioner, William F. Robinson suffered two strokes prior to the hearing and

6. the Magistrate Judge in the lower court, never scheduled another hearing, or saw Petitioners computer gloves, to compare petitioners gloves to the Fakespace gloves, prior to the court ruling in favor of Fakespace.

Before Petitioners responded, and filed objections, Petitioners thought the trail court was going to schedule another hearing, after the trail judge sent Petitioners a letter stating "when I receive your response, I will issue a Scheduling Order". **APP. 26, copy of letter from the judge, dated March 27, 2001.**

The fact is, the trail court never sent Petitioners a Scheduling Order, or scheduled another hearing. And also, the merits and circumstances, surrounding this case is somewhat different then the Celotex v Cartrett case, because the fact is, Petitioners have legitimate evidence showing that Fakespace corresponded with Petitioners, and knew about Petitioners computer gloves, before Fakspace manufactured, sold, published or applied for a patent.

(3) The panel stated on page 5, starting on line 9, second paragraph, "although the Robinson"s argued to the district court, and reiterate here, that Fakespace resistors are equivalent to the resistor recited in the patent, they made no showing at all in the district court, with respect to the remaining three limitations:
(1) the wires connecting the finger contacts to the single connector **(2)** the wires connecting the thumb to a common connector terminal on the connector, and **(3)** the resistor in line between both

thumb contacts and the connector common terminal. The fact is, Petitioners explained the best they could, ProSe.

Petitioners submitted a copy of their patent to the trail court, and the Appeals court. Petitioners claimed device is shown in figure 1 of their patent, the resistor 24, is in series between both thumb contacts 18a and 16a, and the common terminal of the connector 22. Figure 1 of Petitioners patent shows both thumb electrodes 16a and 18a connected by a wire to resistor 24, and the common terminal 8, (said resistance means is connected in series between said terminals and contacts on the thumb portions of both gloves) the Fakespace resistor 610 in their device, is equivalent to Petitioners resistor 24 **(SEE APP. 79-80, schematic drawing of petitioners computer gloves).**

Fakespace is using resistor 610 in the thumb leads and fingers in the pinch gloves, that is equivalent to petitioners claimed inventionn, under the doctrine of equivalents, in respect to the wire connector, thumb leads, and the resistor 610.

The fact is, Petitioners used resistors to make their device compatable with other computers, and video game systems.

At the Hearing, on March 7, 2001, attorney Crockett testified under oath, that a resistor is required in the thumbs of their pinch gloves. **Refer to court transcript, pg. 23, lines 1- 4, and see pg. 31, lines 1 -3.**

Fakespace's resistor 610, is connected to the thumb leads, and fingers, on the right and left hands of their gloves . **APP, 81, 82, 83, copy of schematics and circuity from the file history of Fakespace, petitioners received from the patent office.**

Just because the pinch gloves, is connected in series with separate parts, does not mean they are not infringeing on petitioners patent, under the doctrine of eqivalents. The fact is, Fakespace copied Petitioners gloves, and changed the sequence of their device and put the resistors in series in line with the computer. The law states, that changing the relative position of the parts of a machine or in manufacture does not avert infringement, where the parts transposed perform the same respective functions, after the change as before. Infringement of a process patent may occur even when precise idenity does not exist in respect of the process claimed by the patent, and that used by the infringer.

See Toledo Rex Spray Co. v California Chemical Co., 268 F. 201 mod in part 30 F2d 4955 (Ca6); Donner v Sheer Pharmacal Corp. 64 F2d 217,223,17 USPQ 117, (Ca8). The general rule is, that addition of an element, part ingredient or step to those specified in a claim does not avert infringement. **If the infringer adopts the patented device in its entirity, and in addition merely adds elements to it, which do not destroy its function, infringement is not avoided.** 1900 Washer Co. et al v Crammer et al. 168 F (Ca 30) Research, Patent Claims, 2nd Edition, Anthony W. Deller 1 Sections 1,2,3.

Figure 5-C, of the Fakespace patent describes their patent structures. Their (Fakespace) resistors are connected in series of the thumb 21-22 contacts, and are connected to separate connectors, through their own separate wires (43-44) resistors are connected in series, on the finger leads (23-30) of the left glove, and are connected to separate connectors, the right glove connects to a separate connector, that is connected to the computer. **APP. 84, Fakespace glooves schematic drawing, connected to the computer in series.**

In the second paragraph, of the Fakespace patent - 9- it states that, the operator accomplished a gesture by touching the index finger to the thumb, **APP. 85, copy of paragraph from Fakespace patent,** (high lighted in bold print). and **SEE APP. 86, copy of paragraph from petitioners patent, highlighted in bold print) and Refer back to APP. 80.**

In the 5th paragraph of Petitioners patent -1- it states that, the surfaces of contacts 16a-16e and 18a-18b, are exposed such that physical contact between the fingers and thumb tips obtains the results in electrical connections between the contacts, and that the thumb and finger contacts are connected by cable/wire. In figure 5-C of the Fakespace patent, No 6, 128,004, it shows the schematic drawing and circuitry of Fakespace computer. The drawing clearly shows the circuitry and resistor 610 of the Fakespace gloves fingers and thumbs. **Refer back to APP. 84, copy of pinch gloves/circuitry/resistors schematics, joined/ connected, in direct line with the computer in series.**

If the missing limitations, concept, and the operation of Petitioners computer gloves, are compared to the Fakespace gloves, the gloves functions, and operation is relatively the same, literally, and/or, under the doctrine of equivalents.

For Instance : 1. The Fakespace gloves have a series of resistors, on each finger and thumbs, in line with the computer, each glove having a separate wire connector, that is equivalent to Petitioners single resistor, in its gloves, and single wire connector, as opposed to having a series of resistors. **2.** Fakespace have a two glove embodiment, each glove having a separate wire connector, that is equivalent to petitioners two glove embodiment having a

a single wire connector.

3. Fakespace have wires connecting its gloves thumb leads in series to a terminal on the connector, and each glove thumb leads, having a separate connector, that is equivalent to petitioners thumb leads, having a single terminal.

4. Resistor 610, of the Fakespace gloves thumb leads is connected in direct line, with the computer in series, and is equivalent to petitioners claimed invention, and petitioners single resistor

5. The Fakespace pinch gloves, touches fingers to thumbs, the same as petitioners claimed invention, and is equivalent to petitioners gloves, touching fingers to thumb, literally and/or under the doctrine of equivalents. **6.** The Fakespace patent, second paragraph, -9-, line 9, states that physical contact between the fingers and thumb tips, obtains or results in electrical connection between the associated contacts, and is equivalent to petitioners invention, in respect to physical contact between the fingers touching thumbs resulting in an electrical connection.

7. The Fakespace gloves, can be inter-faced, and programmed to be used for work and play, the same as petitioners gloves, and is equivalent to petitioners gloves under the doctrine

8. Petitioners computer gloves can be used on a wall sized computer, or video screen, the same as as Fakespace's computer gloves, and is equivalent under the doctrine of equivalents.

9. Fakespace gloves, are made of fabric, and have resistors, 610, in the thumb leads, on the right and left hand of the gloves, that is equivalent to petitioners cloth gloves, and resistor 24, in petitioners thumb leads.

10. Petitioners patent clearly stated, -1-, in the 5th paragraph, lines 18-26, "In manufacture, gloves 12, 14 may be of any construction and contacts may be adhered or affixed by any means to the fingers and thumbs. On -2- second paragraph of Petitioners patent, at 20, it states, that "although the invention has been described in detail in conjuction with the presently preferred embiodment, illustrated in the drawing, it will be apparent that many modifications and variations may be inplemented without departing from the principals of the invention. **Refer to Petitioners Patent "139".** Petitioners gloves can be programmed to function for a variety of gestures, and shown on a wall unit, depending on the user and the program, just like the Fakespace gloves. The fact is, under the Doctrine, the accused device must contain each claim element of the patent or it's equivalent. Elements are equivalent if the differences between the two are "Insubstantially" to one of ordinary skill in the art, and the Doctrine is applied to individual claim elements. The test to determine "Insubstantially" is whether the element performs substantially the same function in substantially the same way to obtain the same result as the claim limitation. Under the Doctrine, the pinch gloves/resistor, is equivalent to petitioners gloves, and performs substantially the same function to obtain the same result as the claim limitation.

(4) On page 7, of the Appeals Panel Opinion, starting on line 7, it states that "Petitioners served a discovery request on Fakespace on February 7, 2001, apparently after the trail judge stayed discovery", and did not indicate to the court a need for additional discovery". **Refer to Statement of Appeals panel.**

The fact, is attorney Crockett was not truthful when he insinuated to the court that Fakespace had already served petitiones.

and that additional discovery was not needed. The truth is, Fakespace **"Never" gave Petitioners discovery at anytime, before or after the hearing., and Petitioners "Never" served a discovery request on Fakespace on February7, 2001.** The fact is, Petitioners **"did"** indicate to the court that they needed discovery and Fakespace still refused to give Petitioners discovery. Petitioners served discovery requests via- subpoena, letters and by telephone, before the trail judge stayed discovery. The fact is, Petitioners sent Fakespace a letter in January of 2000, requesting discovery. After Fakespace did not respond to the letters and phone calls, Petitioners served Fakespace with a subpoena, that was signed by the court. Fakespace did not respect the subpoena. Attorney Crockett sent Rosa Robinson, a letter, dated August 10, 2000., stating, subpoena will not be respected. **Refer to APP. 66.** After Petitioners received the letter, Rosa Robinson called attorney Crockett, and requested discovery again, Fakespace still refused. On November 21, 2000, Attorney John Artz, filed a motion of non-infringement, containing a Memorandum of Points and Authorities, in support of the Fakespace Motion, stating that "further discovery is not necessary" **SEE App. 87-102 copy of Memorandum, pg. 12, third paragraph, and pg. 13** . The trail court was well aware of the fact, that Fakespace refused to give Petitioners discovery, before the court stayed discovery, because Petitioners had informed the court. Petitioners sent another discovery request to Fakespace on January 30, 2001. **SEE APP. 103, copy of letter** dated January 30, 2001. (Petitioners could not find the letter dated January 1, 2000) Attorney Crockett was not truthful when he testified under oath at the hearing on March 7, 2001, that he gave petitioners discovery. **Refer to court tran-**

script, pg. 45, lines 9-25 and **pg. 46, lines 1-20**.

The Fact is, Petitioners requested, discovery from Fakespace before the Status Scheduling Conference, that was held on October 16, 2000, and before the court stayed discovery and before the Summary Motion Hearing was held on March 7, 2001. The Appeals Panel was incorrect, when it stated that Petitioners requested discovery on February 7, 2001 and requested discovery after the Status Conference.

After the trail court stayed discovery, the day of the scheduling conference, attorney John Artz, (who was also representing Fakespace) sent the trail judge a letter, dated February, 16, 2001, stating that, Appellants had served its first set of discovery requests (which was not true) re- confirming the fact that they (Fakespace) did not have to respond to Appellants discovery requests, or give Appellants discovery, with the approval of the court. **SEE APP. 104, copy of letter, dated February 16, 2001. (5)** On page 7, of the Appeals Panel statement, starting on line 9, the panel stated that, "at that time, however, the Robinson's were already in possession of schematics for the pinch glove system, an actual pair of the gloves, and a user manual for the gloves". The fact is, even though Petitioners had a pair of the pinch gloves in their possession, Petitioners still did not have the schematics or circuitry of the gloves. The only information the users manual provided, was how to operate the pinch gloves. There was no other information in the manual, in respect to the pinch gloves circuitry, or schematics. Petitioners had no technical information on the pinch gloves, or the host computer. On March 23, 2001, Petitioners filed a motion requesting more time to file objections, hoping they would get the information they needed

from Fakespace's file history from the U.S. patent office before they filed written objections. The trail court granted Petitioners motion for more time to file objections, but Petitioners did not get Fakespace's file history from the patent office in a timely fashion. Petitioners time was running out on the motion, requesting more time, and Petitioners had to respond, and file objections before they had the information they needed, in respect to the circuitry, and schematics of the Fakespace pinch gloves. Petitioners had ordered Fakespaces file history the latter part of January 2001, after Petitioners had sent Fakespace a third letter requesting discovery. Once again Fakespace ignored discovery requests. After Rosa Robinson, had not heard from the patent office, she called the office, and asked why she had not received the Fakespace file history. Rosa Robinson was told that she had to send a request to the Certification Branch of the USPTO, along with the appropriate fee. After the conversation with the patent office, Rosa Robinson received a letter from the patent office dated February 9, 2001, reconfirming the phone conversation. **SEE APP. 105, copy of letter from patent office, dated February 9, 2001.** Soon after that phone conversation, with the patent office, Petitioner Rosa Robinson mailed the patent office the fee ($225.00). **SEE APP. 106, copy of statement from patent office, dated April 3, 2001.** In May, of 2001, petitioners still had not received Fakespace's file history. Rosa Robinson called the patent office, and once again inquired about the file history, and why they (petitioners) had not received the Fakespace history. Rosa Robinson was told that she needed to send another forty dollars to cover the cost of 100 additional pages, a total of 500 pages.

After that conversation, Rosa Robinson sent the patent office an additional $40.00 and a cover letter dated May 22, 2001. **SEE**

APP. 107, copy of letter, Rosa Robinson sent to the United States Patent Office, dated May 22, 2001. On June 21, 2001, the patent office sent Rosa Robinson a letter, stating that the copies of the file history could not be located, that there would be a delay. **SEE APP. 108, copy of letter from the patent office dated June 13, 2001.**

(6) On page 8, of the Appeals Panel Opinion, starting on line 3, it states that, one cannot prevail on a claim for patent infringement, merely because the patented invention and the accused device share the same general concept. **Refer to Appeals Panel Statement.** The fact is, what the trail court and Appeals court failed to see, and understand**, that is very relevant, and was misconstrued, is the fact, that is was not Fakespace's concept, idea, or invention,** it was Petitioners. Petitioners had submitted legitimate evidence to the court, ProSe, to the best of their ability.

At that time, Petitioners was not aware of all the court procedures, and the laws. Petitioners could not verbally express themselves on paper in legal terms. If the trail court would have held another hearing, petitioners could have verbally and physically, identified the two claims that Fakespace is infringing, under the doctrine, and pointed out to the court exactly how Fakespace was using their claims in the pinch gloves, in respect to Fakespace's, resistor, 610, in the thumb leads. Attorney Crockett took advantage of the situation, and made false statements at the Hearing on March 7, 2001. **Refer to court transcript, pg. 31, lines 1-25** and **SEE pg. 32, lines 1-25.**

The Appeals court ruled that conspiracy, fraud, perjury, and unclean hands, was not relevant, that it was only pertaing to the application of their (Fakespace) patent. Petitioners disagree,

The unclean hands issue was not only applying to the Fakespace patent. Some of those issues was applying to the untruthful statements that attorney Crockett filed in his motions, and declarations, as well as the things he stated that was not true and testified to, under oath, at the Summary Motion hearing on March 7, 2001.

This court may need to read the trail court transcript in its entirety from the March 7, 2001 hearing. **Refer to transcript, pgs. 1-54** and **trail court Dockett.** The Court of Appeals has sent the wrong message. The message being, that people who try to protect their legal rights, ProSe, will not get due process, and may not be taken seriously, or treated fairly . Attorney Crockett notably and intentionally, misrepresented the facts.

Fakespace never denied any of the allegations, in respect to stealing/copying, petitioners ideas and concept. Attorney Crockett admitted to the court at the hearing, when he testified that "by popping off petitioners resistor, avoided infringement, **SEE transcript pg. 45, lines 1-8**

"ARGUMENT"

Petitioners did not get due process. The trail court abused its power, when it stayed discovery, and when it did not enforce the laws. Fakespace is using petitioners claims in their computer gloves that is very relevant. Because of the courts ruling, one might think that it is all right for an attorney/company to steal, commit perjury, fraud, and conspiracy.

The United States Court of Appeal erred in a manner harmful to national jurisprudence by affirming the trail courts ruling, and stating that un-clean hands was not an issue, it seemed that the two courts did not care that attorney Crockett had not been truthful, and that Fakespace had committed perjury.

In view of Petitioners facts and evidence, which either directly or by permissible inferences (and these inferences are a product of the underlying claim) supports all elements Petitioners need to prove in order to prevail on their legal claim. Petitioners had made out a prima facie case and the Fakespace Motion for Summary Judgment should have failed, regardless of the burden of proof.

In other words, whether the evidence is clear and "convincing" or proves the point, by mere preponderance, are for a fact finder, to determine. Creditability, Determination, the weighing of evidence, and the drawing of legitimate inferences, from the facts, are jury functions, not those of a judge, whether he is ruling on a motion for Summary Judgment, or a directed verdict "**The evidence of the non-movement is to be believed, and all justifiable inferences are to be drawn in his favor**".

" CONCLUSION "

The doctrine of Equivalents expands exclusive rights beyond the scope of a claim. Malmont Industries Inc. Reinke Manufacturing Co. Ind., 983 F, 2d. 109 1043, 1044, 25 USPQ 141, 1455 (fed. Cir. 1993).

Petitioner has set forth specific facts showing that there was a genuine issue of material facts, that should have been heard by a jury, and facts showing that the trail court and Appeals Court erred, and why a writ of certiorari should be granted.

Respectfully submitted,

October 3 , 2003

Rosa Robinson

Rosa Robinson, Petitioner, ProSe

APP. 1

WILLIAM FREDEICK ROBINSON, PRO SE
ROSA (MARY) ROBINSON, PRO SE
WILLIAM HENRY ROBINSON II, PRO SE

Petitioners

V.

FAKESPACE LABS. INC.

Respondent (s)

PETITION FOR A WRIT OF CERTIORARI

Appeal from the United States Supreme Court Federal Circuit

APPENDIX

Rosa Robinson
8631 Griggs
Detroit, Michigan 48204
(313) 491 - 5212

APP. 2

APPENDIX TABLE OF CONTENTS

Appeals Court Judicial Statement and Oponion

decided on March 5, 2003..... **Page** .6 -13

Petition for a Rehearing

March 14, 2003 14

Order Denying ReHearing

March 31, 2003..... 15

Fakespace Opposition

June 16, 2000 16-17

Order transferring case to Michigan

November 6, 2000 18-19-20

Letter from California Dist. Judge

September 20, 2000..... 21

Notice of Status Conference (trail court)

October 6, 2000 22

Notice of Hearing (trail court)

February 20, 2001 23

Letter from Patent Attorney Expert

November 29, 2000 24-25

Letter from Judge Thomas A. Carlson to Petitioners,

March 27, 2001 26

Order stating, plaintiff;s be provided with transcript

March 8, 2001 27

APP. 3

Order setting deadline for Petitioners to respond

April 13, 2001 28-29

Magistrate Judge, Edmunds, Report and Recommendation

September 4, 2001 30-36

Order Granting Petitioners more time to file objections

September 20, 2001 37

Plaintiff's Response and Objections to Mag. Judge's Report

September 21, 2001 38-45

Order Accepting Mag. Judge's Report

September 23, 2001 46

Trail Court Judgment

September 26, 2001 47

Letter from Ian McDowall, to Rosa Robinson

October 23, 1995 48

Letter to Rosa Robinson, from Attorney K. David Crockett

May 20, 1999 49-50

Letter to Rosa Robinson from Attorney Crockett

December 20, 1999 51

Letter to Circuit Court Judge, Judge Lousi F.Simmons, from attorney Crockett

December 20, 1999 52-53

Letter To Circuit Court Judge, Simmons

January 12, 2000 54-55

APP. 4

Letter to Circuit Judge Simmons, from attorney Crockett

January 5, 2000 56

Cover page of Fakespace Patent 57

Fakespace Specification 58

Fakespace, Declaration, for a utility patent

August 22, 1986 59-61

Fakespace Power of Attorney

July 5, 1996 62

Fakespace Press Release

May 5, 1995 63

Fakespace Installion Guide Cover Page

November 1995 64-65

Letter to Rosa Robinson, from attorney Crockett

August 10, 2000 66

Sketch of Petitioners gloves, filed with court 67

Fakespace, Complaint for Declaratory Judgment

December 9, 1999 68-72

Declaration, K. David Crockett

August 30, 2000 73-75

Declaration, Ian McDowall, in support of Summary Motion

October 27, 2000 76

Letter to Rosa Robinson, from attorney Crockett

January 11, 2000 77

Paragraph -7- from Fakespace patent 78

APP. 5

Schematics of Petitioners computer gloves 79-80

Circuity of Fakespace Resistor 610 & computer 81-83

Schematics and circuity of Fakespace gloves and computer joined together, becoming one device/unit.....84

Paragraph from Fakespace patent -9- 85

Paragraph from petitioners patent -1- 86

Fakespace Memorandum of Points and Authorities November 21, 2000 .....87- 102

Discovery Request sent to Fakspace from Petitioners January 30, 2001 103

Letter to Judge Nancy Edmunds from attorney John Artz, stating that "Fakespace does not have to respond to discovery" February 16, 2001 104

Letter from the U.S. Patent Office to Rosa Robinson February 9, 2001 105

Statement from the U.S. Patent Office to Rosa Robinson April 3, 2001 106

Letter to the U.S. patent Office from Rosa Robinson May 22, 2001 107

Letter to Rosa Robinson, from the Department of Commerce, Patent and Trademark Office June 13, 2001 108

APP. 6

NOTE : Pursuant to Fed. Cir. 47.6, this disposition is not creditable as precedent. It is a Public Record. This disposition will appear in tables published periodically

UNITED STATES COURT OF APPEALS FOR
THE FEDERAL CIRCUIT
02 - 1152

WILLIAM FREDERICK ROBINSON
Plaintiff- Appellant

and

ROSA ROBINSON
Plaintiff-Appellant

and

WILLIAM HENRY ROBINSON II.
Plaintiff-Appellant

V.

FAKESPACE LABS. INC.,
Defendant-Appellee

DECIDED MARCH 5, 2003

Before NEWMAN, MICHEL, and BRYSON, Circuit Judges

PER CURIAM

Appellants William Frederick Robinson, Rosa Robinson, and William Henry Robinson II appeal from the decision of the United States District for the Eastern District Court

of Michigan ruling on summary judgment that Fakespace Labs. Inc. did not infringe U.S. Patent No.4, 6`3,139 (the '139 patent).We afirm.

The '139 patent was issued to William Henry Robinson in 1986 and is directed to a pair of gloves adapted for use as a controller for a joystick control port of a video game or computer. Electrical contacts are affixed to some of the fingers and the thumb of each glove. The electrical contacts provide switch-closure control signals to a game console or computer. The patent contains one independent claim, which recites:

1. Apparatus for providing switch closure control signal inouts to a joystick control port of a video console or the like, such control port being prededertimed configuration in which signal inputs consist of electrical closure between a common terminal at said port and one or more signal terminals, said apparatus comprising

a first glove having a thumb portion and four finger portions separate from each other and from said thumb portion,

a second glove having a thumb portion and at least one separate finger portion,

electrical contact means affixed to each of said thumb and finger portions of said first glove adjacent to the tips thereof and to said thumb portion and said one finger portion of said second glove adjacent to the tips thereof, such that physical contact between a thumb portion of one of said gloves and one or more of said finger portions of the corresponding glove obtains electrical connection between the corresponding contacts on said portions,

a connector constructed for removable mating

engagement with a control port, said connector having and signal terminals for individual mating engagement with common and signal terminals for a control port,

first connection means individually electrically connecting said contacts on said finger portions of said first gloves to signal terminals of said connector,

second connection means electrically connecting said contact on said thumb portion of said first glove to said common terminal at said connector, said second connection common terminal and said thumb portion,

third connection means electrically connecting on said finger portion of said second glove to a signal terminal on said connector, and,

fourth connection means electrically connecting said contact on said thumb portion of said second glove to said resistance means such that said resistance means is connected in series between said connector common terminal and the contacts on the thumb portions of both said gloves.

'139 patent, col. 2, 11. 43-68, to col.3, 11 1-19.

Fakespace produces various hardware and software tools for virtual reality analysis and design. Among the company's products is the Pinch Glove System, which is a system for interacting with three-dimensional data. Although it is not the subject of this appeal, the Pinch Glove System is a commercial embodiment of the invention claimed in U.S. Patent No. 6,128,004 ("the '004 patent), which was issued to Fakespace in 2000

Believing that Fakespace's Pinch Glove System infringed the '139 patent, the Robinsons, proceeding prose, filed suit in Michigan court 1999. Fakespace responded by filing suit in the United States District Court for the Northern District of California, seeking a declamatory judgment that the '139 patent was invalid and not infringed by the Pinch Glove System. The Robinsons then filed a new infringement suit in the United States District court for the Eastern District of Michigan. Both federal cases were eventually consolidated in the Eastern District of Michigan.

Fakespace then moved for summart judgment of noninfringement,. contending that the Pinch Glove System does not infringe the '139 patent, either literally or under the doctrine of equivalents. The district court referred the motion to a magistrate judge who recommended that the motion be granted. The district court subsequently adopted the magistrate's recommendation dismissed the case, and entered final judgment in favor of Fakespace. Because the district court adopted the magistrate's recommendation as to all of the limitations pertinent to this appeal, we refer to the magistrate's analysis and conclusions as the district court's.

II

The district court construed claim 1 of the '139 patent to require the following features: (1) the two gloves must be connected to a single connector; (2) there must be electrical contacts on all the fingers and both thumbs; (3) wires must connect the finger contacts to the single connector; (4) wires must connect the thumbs to a common terminal on the connector; (5) the device must contain only a single resistor; and (6) the resistor must be in line between both two thumb contacts and the connector common terminal. It is not clear from the Robinson's filings on appeal whether they challenge the district courts claim construction. In any event, we believe that the claim construction is correct.

to the district court's non infringement holding, we will assume that they dispute the court's conclusion that Fakespace's Pinch Glove System dies not literally infringe the 139 patent. To prove literal infringement, the patentee must show that the accused device contains every limitation in the asserted claims. **Rilles v. Shell Exp;oration &** Prod. Co., 298 F. 3d 1302, 1308, 63 USPQ 2d 1823 (Fed. Cir. 2002). Fakespace argues that its Pinch glove system does not literally infringe the '139 patent because it lacks four of the claim limitations: (1) its finger leads do not connect to the terminal on a single connector; (2) its thumb leads do not connect to a common terminal; (3) its glove does not have a resistor; and (4) it does not have a resistor in a common lead connecting the thumb leads of each glove to a single connector. The district court held that each of those limitations is missing in the Pinch Glove System, and we agrww. We therefore uphold the district court's ruling of no literal infringrment.

The Robinson's contend that the Pinch Glove System infringes their patent under the doctrine of equivalents. An element of an allegedly infringing product is equivalent to a claim limitation if the differences between the two are insubstantial to one of ordinary skill in the art.

Warner- Jenkinson Co. v. Hilton Davis Chem. Co., 520 U.S. 17. 40. 411 USPQ2d 1865 1875 (1997) The doctrine of equivalents is applied to each individual claim limitation, not to the invention as a whole. id. at 29, 41 USPQ2d at 1871.

Under Federal Rule of Civil Procedure 56 (c), summary judgment is proper "if the pleadings, depositions, answers to interrogratories, and admissions on file, together with affidavits, if any show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Summary judgment must be entered against any party who bears the burden of proof at trail if that party fails to show an existence of a genuine issue of material fact on the subject of the motion. **Celotex Corp. V. Cartrett, 477 U.S. 317, 322-23**

(1986). The district court found that the Robinson's had presented no evidence of equivalency for any of the four missing limitations. Although the Robinson's argued to the district court, and reiterate here, that Fakespace's resistors are equivalent to the resistor recited in the patent, they made no showing at all in the district court at all in the district court with respect to the remaining three limitations. (1) the wires connecting the finger contacts to the single connector; (2) the wires connecting the thumbs to a common terminal on the connector; and (3) the resistor in line between both thumb contacts and the connector common terminal. Nor do the Robinson's present any argument as to the equivalency for those three limitations on appeal; they focus exclusively on whether the Pinch Glove System contains an element equivalent to the resistor claimed in the '139 patent. Because failure to demonstrate equivalency for any single element in the accused device is enough to defeat an assertion of infringement under the doctrine of equivalents, **Eagle comtronics, v. Arrow Communication Labs. Inc.**, 305 Fed. 3d 1303, 1315, 64 USPQ2d 1481, 1489 (Fed. Cir. 2002), we uphold the grant judgment of non infringement under the doctrine of equivalents without needing to address the resistor limitation.

We note that the district court based its conclusion in part on this court's en bancc holding in **Festo Corp. v. SMC. 234 F. 3d 558, 56 USPQ2d 1885 (Fed. Cir. 2002),** that the patentee surrenders all equivalents to an amended claim limitation by narrowing the claim for reasons related to patentabilty. As the Robinson's note, the Supreme Court reversed aspects of that decision. However, because our ruling is based on the Robinson's failure to meet the minimum showing to preclude summary judgment rather than prosecution history estopell, it is unnecessary to determine what effect the Supreme Court's decision in Festo would have on the doctrine of equivalents analysis.

111

The Robinsons challenge the district court's decision to stay discovery pending adjudication of Fakespace's motion for summary judgment. Because the question whether to stay discovery is not unique to our jurisdiction, we review that ruling under the law of the regional circuit, **SEE Advanced Cardiovascular** Sys. v. Medtronic, Inc,. 265 F. 3d 1294, 1308, 60 USPQ2d 1161, 1171 (Fed. Cir. 2001). The South Circuit Reviews discovery stay orders to determine whether the district court has abused its discretion based on a showing of substantial prejudice. **Hahn v. Star Bank** 190 F. 3c 708, 719 (6th Cir. 1999) In this case, we do not believe that the trail court abused its discretion in staying discovery. The Robinson's did not file a motion under Federal rule of Civil Procedure 56 (f) or otherwise indicate to the district court a need for additional discovery to present their opposition to Fakespace's motion. They served a discovery on Fakespace on February 7, 2001, apparently after the trail court had already stayed discovery. The request sought various schematics and financial information related to thr Pinch Glove System/ At that time, however, the Robinson's were already in possession of schematics for the Pinch Glove System. an actual pair of the gloves, and a user manual for the gloves. Moreever, the financial data requested by the Robinson's had no relevance to the dispostive legal issues in Fakespace's motion. Under similar circumstances, the Sixth Cirvit has upheld a syat discovery. See Hann, 190 F. 3d at 719-20

1V

The Robinson's charge Fakespace with conspiracy, fraud, perjury, and unclean hands. Those charges, however, appear to concern the validity of Fakespace's '004 patent, an issue that was not before the district court and is not an issue in this appeal. The Robinson's also allege that Fakespace designed around their patent. Even if true, however, that contention simply raises the question whether the accused infringer successfully designed around the patent or infringed the patentee's legal rights. Finally, the Robinson

rights. Finally, the Robinson's assert that Fakespace's device is quite similar to their claimed invention, therefore they should not prevail in their **infringement suit,** however, there is a specific procedure to determine infringement, which involves consulting the patent claims limitation by limitation and comparing each limitation to the corresponding element of the allegedly infringing device. One cannot prevail on a claim for patent infringement merely because the patented invention and the accused device share the same general concept. Even if this court were to agree that the Pinch Glove System embodies the heart of the Robinson's patented invention, that determination alone would not support a finding of infringement. Because the district court did not commit error in granting Fakespace's motion for summary judgment, we affirm the judgment below.

APP. 14

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

02 - 1152

WILLIAM FREDERICK ROBINSON

Plaintiff - Appellant

and

ROSA (MARY) ROBINSON

Plaintiff - Appellant

and

WILLIAM HENRY ROBINSON II,

Plaintiff - Apellant

V. FAKESPACE LABS. INC.

Defendant - Appellee

Appeal from the United States District Court for the Eastern District Of Michigan in 00 - CV - 70272, Judge Nancy G. Edmunds.

INFORMAL, PETITION UNDER RULE 27 TO SUBMIT DOCUMENTS SHOWING ERRORS, ON OPINIONS AND STATEMENTS, AS PART OF THE APPENDIX IN SUPPORT OF RE-HEARING

Now comes Appellants, William Frederick Robinson, Rosa (Mary) Robinson II, and William Henry Robinson in Pro, Se, jointly, requesting questing permission to submit documents showing errors in some of the statements and opinions, made by the panel, that may require a different judgment.

" S/ "

ORDER

Before NEWMAN, Circuit Judge, MICHEL, Circuit Judge, and BRYSON, Circuit Judge :

A petition for rehearing having been filed by the APPELLANTS, UPON CONSIDERATION THEREOF, it is

ORDERED that the petition for rehearing be, and the same hereby is, DENIED.

THE mandate of the court will issue on April 7, 2003.

FOR THE COURT,

"S_____"

Jan Horribly

Clerk

Dated : March 31, 2003

cc: W. F. Robinson, Rosa Robinson, W. H. Robinson

K. David Crockett

Robinson V Fakespace Labs, 02-1152

APP. 16

1. K. David Crockett
Crockett & Crockett
2. 24012 Calle de la Plata , Suite 400
Laguna Hills, CA 92653
3. California State Bar No. 155 - 455
4.
5. Attorney for Plaintiff
FAKESPACE LABS. INC.
6.
7.
8.
9. UNITED STATES DISTRICT COURT
10. NORTHERN DISTRICT OF CALIFORNIA
11.
12. FAKESPACE LABS. INC., Case No. : C99-05258 WHA
Plaintiff,
13. VS.
14. ROSA MARY ROBINSON Plaintiff's Opposition to
an individual Defendants Response
16. WILLIAM FREDERICK
ROBINSON II, an individual: and, Date: unassigned
17. WILLIAM HENRY ROBINSON, II, Time: 8:a.m.
an individual: and
18. ROSA MARY ROBINSON, WILLIAM FREDERICK ROBINSON
19. WILLIAM HENRY ROBINSON II, an unknown legal entity
20. **Plaintiffs Opposition To Defendants Response**

2. The main witnesses which I intend to call in this case , i required, are the officers at Fakespace, Inc., and an expert on electronics. All the officers of Fakespace reside near Mountian View California. While we have not retained an expert, the expert will most likely be a resident of the Bay area, as it is impractical to locate and retain an expert near Detroit.

3. I have had numerous telephone conversations with Mrs. Robinsin sinse 1995, when she first sought to license the '139 patent to Fakespace. I have explained that the patent requires a resistor not found in the Fakespace Pinch Glove, so that the license or purchase would have to be very low. I have offered on behalf of Fakespace up to twenty thousand dollars to buy the patent. However, the Robinson's have asserted that the patent is worth several million dollars.

4. I chose to file this case in Northern District because because all the acts giving rise to the action occurred in Mountain View California. Also, given the current status of Fakespace Labs. and the new venture which the officer's are involved in, they can ill afford to the burden of a trail, much less the extended burden of litigation and trail in Detroit.

I declare under penalty of perjury under the laws of the state of California, that the foregoing is true and correct and this declaration was executed on June 16, 2000 at Laguna Hills, CA.

Date : June 16, 2000 "S/_____"

K. David Crockett

APP. 18

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

FAKESPACE LABS, INC.,

Plaintiff

V.

ROSA MARY ROBINSON, an individual; WILLIAM FREDERICK ROBINSON an individual, an WILLIAM FREDERICK ROBINSON an individual, et al,

Defendants

No. C 99-05258 WHA

ORDER TRANSFERRING DISTRICT OF MICHIGAN AND DENYING FAKESPACE"S MOTION FOR SUMMARY JUDGMENT WITHOUT PREJUDICE

ENTERED IN CIVIL DOCKET

This order holds that the first to file rule requires Fakespace Labs, Inca designer and producer of virtual Reality tools, filed this declaratory judgment action for non infringement and invalidity of United States Patent No. 4,613,139 against patentees William Henry Robinson,II William Henry, and Rosa Robinson. The patent at issue covers video control gloves that can be used in playing video games. Fakespace is a California corporation with its place of business in Mounttain view. The Robinsons, who are not represented by counsel, are domiciled in Detroit, Michigan.

On October 18, 1999, the Robinson's filed a complaint for patent infringement in Michigan's Wayne County Circuit Court. Two months later, on December 13, Fakespace filed this declaratory-judgment action alleging that ita Pinch Glove does not infringe the Robinsons patent an that the patent is invalid.

On January 6, 2000, the Robinsons filed an emergency motion to remove their state case to the federal district court in Detroit, where a few weeks later, they filed a new patent infringement suit———— *Robinson v. Fakespace Labs, Inc.,* Civil action No. 00-CV-70272 DT, assigned to the Honorable Nancy G. Edmunds. Shortly after they filed their new suit, their motion to remove was denied and the state court case was dismissed with their approval. On February 28, Fakespace filed a motion to dismiss in the case before Judge Edmunds on the grounds that it was duplicative of their of their declatory—relief action in California, which, they argued, was the first filed.

On April 13, at a case management conference in the present case, Fakespace requested that default be entered against the Robinson's who had not answered Fakespace's declatory relief complaint. The court declined to do so, noting that Rosa Robinson had appeared by filing a letter. Instead, the court issued an order requiring the Robinson's to answer the complaint or move to dismiss it. On May 5, Rosa Robinson filed a Response to Complaint for Declaratory Judgment (sic) Under Rule 12 of the Federal Rules or case law, her response raised questions venue and personal jurisdiction. Construing Rosa Robinson's Response as a motion to dismiss or transfer, the court set a briefing schedule.

On June 19, Fakespace filed a response and personal jurisdiction issues arguably raised by plaintiff. At the same time, Fakespace also filed motions for summary judgment of no infringement and invalidity. These motions were premature under this district's local patent rules, which contemplate that a ***Markman*** hearing will precede motions for summary judgment. The court took the motions for summary judgment off the calendar, and tuened to the question of personal jurisdition.

In the meantime back in Michigan, Magistrate Judge Thomas A. Carlson filed a report and recommendation regarding Fakespace's motion to dismiss the Robinson's complaint. The report viewed the Robinson's suit as the first to file because the Robinson's precursor state

court suit had been filed before Fakespace's California suit. Nevertheless, the report recommended that Judge edmunds stay the Robinson's federal - court suit in light of the amount of work that this court had already put into Fakespace's declaratory-relief action. Upon reviewing the report and recommendation, the undersigned sent a letter to Judge Nancy Edmunds explaining that no substantive work had been done in this case. Judge Edmunds chose not to stay the Robinson's suit. The question now is whether the present suit should be stayed, transferred, or dismissed in deference to the Robinsons' suit in the Eastern District of Michigan.

Where a complaint involving the same parties and sane issues has already been filed in a different federal district, the court in which the second suit is filed may either transfer, stay or dismiss the second suit. This allows the court in which the action was first filed to decide whether to try the case. *Alltrade, Inc. v. Uniweld Products, Inc.,* 946 F2d 622,625 (9th Cir. 1991). When one of the federal cases has been removed from state court. *see igloo Products Corp. v. The Mounties, Inc., **735 F.Supp,** 214, 217 (*S.D. TX 1990.

Although the Robinson's Michigan state-court suit was not formally removed to federal court, this court agrees with Magistrate Judge Carlson that the Robinson's federal suit can fairly be said to be a continuation of their state - court suit, which was filed before Fakespace's declatorary relief suit. Under the first- to- file rule, then, the Robinsons'choice of venue wins out. The clerk shall transfer the file to the Eastern District of Michigan. Fakespace's Motion for summary judgment is DENIED without prejudice to re-filing in the Eastern District of Michigan.

IT IS ORDERED

Dated : November ___, 2000

" S/_____ "

APP. 21

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

Honorable Nancy G. Edmunds

United States District Court

211 Theodore Levin United States Courthouse

231 West Lafayette Boulevard

Detroit, Michigan 48226

Re: *Robinson v. Fakespace Labs, Inc.*, Civil Action No. 00-70272

Dear Judge Edmunds :

I understand that defendant Fakspace Labs, Inc., has moved to dismiss the above case on the ground that ir is a duplicative of a mirror-image declaratory-judgment action assigned to me in the Northern District of California. A copy of Magistrate Judge Carlson's report and recommendation on Fakespace's motion was forward to me, and I have reviewed it. Although Magistrate Judge Carlson concluded that the Robinson's suit in the Eastern District of Michigan was the first filed, he recommended that you stay their suit in light of the amount if work this court has already put into this case. I understand that you have not ruled on the motion.

The purpose of this letter is to clarify that this Court has done no substantive work on Fakespace's declatory-judgment action. The hearing and briefing schedules for Fakespace's invalidity and non-infringement summary judgment motions were vacated in light of thershold jurisdictional issues. No *Markman* hearing has been scheduled.

No case management conference has been held.

"S/_____"

WILLIAM ALSUP

UNITED STATS DISTRICT JUDGE

APP. 22

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN MICHIGAN

WILLIAM ROBINSON et al,

Plaintiff (s). CIVIL ACTION NO-00702

V. HON. NANCY G> EDMUNDS

FAKESPACE.

Defendant (s).

NOTICE OF STATUS/ SCHEDULING CONFERENCE

TAKE NOTICE that the above-entitled case has been set for a STATUS SCHEDULING CONFERENCE on **OCTOBER 16, 2000 at 2:30 P.M.** in room 211. U.S. Courthouse, 231 W. Layayette, Detroit, MI.

Date: October 6, 2000 By "S/_____"

Carol Hemeyer

Case Manager 313 - 234-5157

APP. 23

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF MICHIGAN

SOUTHERN DIVISION

ROSA MARY ROBINSON, ETAL,

PLAINTIFF (s) CASE NUMBER: 00-CV-70272DT

V. DISTRICT JUDGE NANCY G. EDMUNDS

MAGISTRATE JUDGE THOMAS A.CARLSON.

FAKESPACE LABS. INC.

DEFENDANT (s)

NOTICE OF HEARING

You are hereby notified to appear before the Magistrate Judge Thomas A. Carlson in the above proceeding, on **Wednesday, March, 2001 at 9:30 a.m.** in Room 662, Theodore Levin U.S. Courthouse, 231 Lafayette Detroit, Michigan 48226. The following motion is scheduled for hearing :

Defendant Fakespace's Motion for Summary Judgment of Non-Infringement, filed November 22, 2001

CERTIFICATE OF MAILING

I certify that a copy of this notice was mailed to John Artz, K. David Crockett, Rosa Robinson on this date, February 20, 2001.

Date: February 20, 2001

"S/_____"

APP. 24

LAW OFFICERS

RADER, FISHMN & GRAUER

Professional Limited Liability Company

39533 Woodward Avenue

Bloomfield Hills, Michigan 48304

Telephone (248) 594-0600

Fasmiles (248) 594-0610

Intellectual Property Matters

SUBJECT TO ATTORNEY-CLIENT PRIVILEGE

VIA FACSIMILE

November 29, 2000

Mrs. Rosa Robinson

P.O. Box 06704

Detroit Michigan 48206

Re: Pending Patent Infringement Lawsuit

Dear Mrs. Robinson:

You asked that I remind you by letter that as part of my initial evaluation of your pending infringement lawsuit, I told you in our office meeting that you may need to obtain certain evidence by discovery to assist you in avoiding a possible summary judgment of non-infringement.

To avoid a summary judgment, it is necessary for you to show that there is a genuine dispute of a material (important) fact, requiring a trail to decide the issue. In this case, you may not yet have sufficient factual information in the form of a technical explanation of the way the defendant's accused circuitry works to show why there was an infringement under the doctrine of equavelents. Therefore, to oppose such motion, you will have to persuade the court that the only way for you can

obtain that kind of information is from defendant or their customers, because it is not something that you can determine yourself from the defendant's product. Therefore, you need time to obtain that kind of information by discovery before you can fairly respond to a summary judgment motion.

Specifically, you may need discovery to show that defendant's circuitry is equivalent to the circuitry claimed in your patent with respect to placement of a resistor in the thumb portion of the circuit and with respect to the connection of both thumb circuit portions to a common terminal. It may be that part of the equivalent circuitry is found in the product of Defendant's customer, to which the defendant's product is designed to connect, rather than in defendant's own product. In that case, defendant might be a contributory infringer, rather a direct infringer.

Thus you need to ask about the function and operation of various parts of their circuitry (and possibly that of their customer) and what portions, if any, functions to achieve the results of the thumb resistor portion of your patent.

I hope that this answers your question. Please understand that, as I told you in our last phone conversation, our lae firm is not currently taking any new case on contingent fee basis. Therefore, I am not representing you in your pending lawsuit. All that I have agreed to do is provide you with a preliminary evaluation of your case, as requested by Judge Edmunds and you. This letter is merely a repeat of what I explained in the preliminary evaluation I gave you and your son when you came in my office last month.

Very truly yours,

RADER, FISHMAN, & GRAUER PLLC

"S/_____"

Richard D. Grauer

APP. 26

UNITED STATES DISTRICT COURT

For the Eastern District Of Michigan

Theodore Levin United States Courthouse

231 West Lafayette Blvd.

Detroit, Michigan 48226

THOMAS A. CARLSON *(313) 234-5205*

U.S. Magistrate Judge

March 27, 2001

Rosa Mary Robinson

8631 Griggs

Detroit MI 48204

RE: Robinson v. Fakespace Labs.,

CA No. 00-CV-70272

Dear Ms. Robinson:

As you know, Defendant in this case has filed a Motion for Summary Judgment and the Court took testimony from out-of state Witnesses on its behalf on March 7, 2001. The transcript of that hearing has now been filed and a copy thereof should have been sent to you.

Please let me know if you would like an opportunity to respond: 1) only in writing 2) in writing and by oral argument at a date to be set; 3) only by oral argument at a date to be set, or 4) at a hearing, to be set, *at which you would present witnesses and sworn testimony*.

When I receive your response, I will issue an appropriate scheduling order.

Very truly Yours

"S/_____"

Thomas A. Carlson

UNITED STATES MAGISTRATE JUDGE

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF MICHIGAN

SOUTHERN DIVISION

ROSA MARY ROBINSON,

et al,

Plaintiffs CIVIL ACTION NO. 00-CV-70272 DT

V.

FAKESPACE LABS. INC. District Judge Nancy G. Edmunds

Defendants Magistrate Judge Thomas A. Carlson

_____/

ORDER

The Court having commenced a hearing on Defendant's Motion for Summary Judgment on March 7, 2001, Plaintiffs having been unable to attend because of a medical emergency in the family but Defendant having brought in witness from California, and the court having offered, and Plaintiffs having agreed, to take Defendants argument and testimony, but provide the (pro se) Plaintiffs with a copy of the transcript, following which they may respond in writing and / or at a further hearing date.

Now therefore, **IT IS ORDERED** that Plaintiffs be provided with a copy of the transcript of the March 7, 2001 hearing at government expense.

Dated : 3 / 8/ 01

"S/_____"

APP. 28

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF MICHIGAN

SOUTHERN DIVISION

ROSA ROBINSON, et, al

Plaintiffs,

CIVIL ACTION NO. 00-CV- 70272 DT

V. DISTRICT JUDGE NANCY G. EDMUNDS

FAKESPACE LABS. INC,. MAGISTRATE JUDGE T. CARLSON

Defendant

ORDER

Defendant has filed a motion For Summary Judgment in this patent infringement case, to which Plaintiff's responded, and an evidentiary hearing was held on March 7, 2001, at which only Defendant called witnesses. The court, in lieu of Plaintiff's participation threat, allowed them to various ways to respond. Plaintiff's have now advised the Court that they wish to "respond to the (hearing) in writing only at this time".

Now, therefore, IT IS ORDERED. that Plaintiffs file any supplemental response, with any supporting documents and affidavits, to the Defendant's Motion for Summary Judgment (and in response to the evidence in support thereof presented at the hearing) by **May 11, 2001**

Plaintiffs are directed to Rule 56 (e), F.R. Civ. P. which states in part:

" When a motion for summary judgment is made and supported as provided in this rule , an adverse part's pleading, but the adverse party's

pleading, but the adverse party's response, by affidavits or otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trail

Thomas A. Carlson
UNITED STATES MAGISTRATE JUDGE

DATED : 4/13/01

cc: Honorable Nancy G. Efmunds

APP. 30

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ROSA MARY ROBINSON

WILLIAM FREDERICK ROBINSON

and WILLIAM HENRY ROBINSON,

Plaintiffs and Counter-Defendants, CIVIL ACTION NO. 00-CV 70272-DT

V. DISTRICT JUDGE NANCY G. EDMUNDS

FAKESPACE LABS INC. MAGISTRATE JUDGE THOMAS CARLSON

Defendant and

Counter-Plaintiff

MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

RECOMMENDATION: Defendants motion for Summary Judgment of Non-Infringement should be granted, as Defendant's electronic gloves clearly do not literally infringe Plaintiff's patent for similar gloves, and Plaintiff's are either precluded from arguing equivalent infringement or have failed to present a genuine issue of material fact regarding the same

* * *

FACTS AND PROCEEDINGS

Plaintiffs obtained Patent 4,613,139 ('139) in 1986 for video control gloves, which were designed to replace the joystick control for video games. Defendant subsequently developed and marketed its Pinch Gloves, which also controls information going to a computer by touching fingers to thumb tips to each other, but allows an operator to stand in front of a wall sized 3-dimensional computer screen and simulate various conditions (e.g. fluid dynamics over an aircraft wing).

Believing that defendants Pinch Gloves infringed their '139 patent, Plaintiffs filed suit in Michigan's Wayne County Circuit Court in October 99. Defendant responded with a suit for non-infringement and invalidity of the '139 patent in the United States District Court of Northern California. After lengthy and somewhat complicated venue proceeding's, Plaintiffs suit for infringement is now before this court in the instant case (00-70272) and defendants suit is before the court in

CA 00-7496, which as been reassigned to Judge Edmunds as a companion case.

Defendants has filed a Motion for Summary Judgment of Non-Infringement, which was referred to the undersigned. An evidentiary hearing was held on March 7, 2001, which Plaintiffs was unable to attend, but they were provided transcripts of the proceedings and allowed to respond with any pleadings or exhibits. Numerous responses and replies were then filed, the last of which was plaintiffs Reply to Defendants Surebuttal on July 18, 2001.

DISUSSION

Literal Infringement

In order to prove infringement, Plaintiffs must prove that all of the limitations on Claim 1 (the only claim) present in Defendants gloves, because if any one limitation is missing,

See the undersigned's Report and Recommendation on Defendant's Motion to Dismiss and Judge Edmunds' Opinion and other partially accepting and partially rejecting that report in this case.

there is no literal infringement, Southwest Technologies, Inc., v. Cardinal IG Co., 54 F.3d 1570, 1575 (Fed. Cir. 1995). As paraphrased by Defendant (and not challenged by Plaintiffs) the claim requires:

a) two gloves connected to a single connector;

b, contacts on all fingers and thumbs,

c, wires connecting the finger contacts to the single connector,

d, wires connecting the thumbs to a common terminal on the on the connector,

e, a single resistor,

f, the resistor in line between both thumb contacts and the connector common terminal.

Defendant contends that there is no literal infringement because its gloves' are missing at least four of the described limitations of patent '139.

1, it's gloves have no resistor at all (e);

2, a fortoria, there is no resistor in series between the two thumb contacts (i.e., located in line after the two thumb connectors join) (f);

3, its thumb leads do not connect to a common terminal (d);

4, its finger leads do not connect to terminals on a single connector (c)

As can be seen from the drawings and the exhibits, Defendants gloves do not contain a resistor and they have a separate terminal connector for each glove, which precludes the common thumb connection and the finger connections to a single connector. Plaintiffs do not contend that Defendants gloves literally infringe their patent, and the court

See Exhibit One for the actual claim language and Exhibit Two for the patent schematic drawing of Plaintiff's gloves, appended hereto..

See Exhibit three, appended hereto, for the schematic drawing of Defendants gloves. Samples of the actual gloves have been presented to the Court by Defendant as part of its Surrebuttal to Plaintiffs' additional Reply.

Equivalent Infringement

Plaintiff's contend, that at least to the resistor, Defendants gloves infringe their patent under the doctrine of equivalents. Under the doctrine of the accused device must contain each claim element of the patent or its equivalent. Elements are equivalent if the differences between the two are "insubstantial" to one of ordinary skill in the art and the doctrine is applied to individual claim elements, not to the invention as a whole. Warner-Jenkinson Co. v. Hilton Davis Chemical Co., 520 U.S. 17, 37, 39-40 (1997). The traditional test to determine "insubstantially" is whether the element performs substantially the same way to obtain substantially the same resul as the claim limitation. Graver Tank & Mfg . Co V. Linde Air Products Co., 339 U.S. 605, 606 (1950).

Plaintiffs refer the court to Figure 5 of Defendant's patent for its Pinch Gloves, and the accompanying text which it states :

The interface between 604 (the micro controller) and the gloves is implemented by the resistors 610 and the connectors 608 and 609. the diodes, 611 and similar, provide the static protection which is necessary as there are exposed contacts on the gloves.

(Emphasis Added)

Defendant just recently obtained Payent 6, 128, 004 for its Pinch Glove, but the parties agree this by itself resolve the question of whether Defendants glove infring Plaintiff's patent.

See Exhibit Four, appended hereto, and Exhibit 5 of Plaintiff's Reply (Dockett # 32) and Exhibit A of Plaintiff's reply (Dockett # 34)

They argue that Defendant's resistors in the controller, in line with each finger, serve the same function as Plaintiff's resistor in the glove to protect schock from the exposed contacts on the gloves), and thus is equivalent. In other words, there is electrical equivalence between the common resistor and several individual resistors. The undersigned is persuaded, however, that this is insufficient to establish infringement for the following reasons.

First, under the current state of the law, Plaintiffs are estopped from arguing equivalence. After Plaintiff;s application was challenged as being obvious in light of prior art, they amended their claim to add the feature that the thumb contacts were connected to a common resistor to the common terminal of the apparatus connector, identifying the resistor as "critical to the invention". In Festo Corporation v. SMC, 234 F. 3d 558 (Fed. Cir. 2000), the court held that any reason for amendment to a patent claim that is related to patentability will give prosecution history estoppel, and that when that occurs there is no range of equivalents for the amended element. The court stated :

We hold that prosecution history estoppel acts as a complete bar to the application of the doctrine of equivalents when an amendment has narrowed the scope of a claim for a reason related to patentability.

P. .574.

With a complete bar, both the public and the patentee know that once an element of a claim is narrowed by amendment for a reason related to patentability, that element's scope of coverage will not extend beyond its literal scope.

P. 577.

Thus, under the complete bar approach, technological advances that would have lain in the unknown undefined zone around the literal terms of a narrowed claim under the flexible bar approach will not go wasted and undeveloped due to fear of litigation. The public will be free to improve on the patented technology and design around it without being inhibited by the threat of a lawsuit because the changes could possibly fall within the scope of equivalents left after a claim element has been narrowed by amendment for a reason related to patentability. This certainly will stimulate investment in improvements and design-around because the risk of infringement will be eiser to determine.

P. 577

Certiorari has been granted in the Festo case on the question of whether prosecution history estoppel completely bars application of the doctrine of equivalents, Case #00-1543, June 18, 2001, 69 U.S.I. W.375. But unless and until the supreme Court reverses the 8-4 en banc, decision, Festo would bar Plaintiff's equivalents argument.

Second, there is no evidence that resistors accomplish the same result by performing the Sam function in the same way as Plaintiff's resistor. Defendant's resistor are in the controller, two units removed from the gloves themselves; Plaintiff's resistor is just outside the gloves. Defendants has a resistor in line with each finger and thumb; Plaintiff's have only one resistor, in line only with the two thumbs. Plaintiff's stated purpose for the resistor is a safety precaution because there are exposed contacts on the gloves (Docket # 32) whereas Defendant's patent does not state a purpose for the resistors, but does state that the diodes provide static protection ((supra. p 4). Thus , even if Plaintiffs were allowed to argue equivalents, there does not appear to be sufficient evidence to establish the required common function and means.

Finally, even if Defendants resistors were found equivalent to Plaintiff's resistor, no equivalents are shown for the other specific claim elements. Defendant's resistors are not

connected in series with the thumb contacts; Defendant's thumb leads are not connected to a single terminal on a single connector, and Defendants finger contacts to terminals on the same connector. Because Plaintiffs have failed to show an equivalent structure on Defendants gloves for each and every missing limitation, there can be no infringement.

Plaintiff's allegations of unclean hands, designing around a patent, conspiracy, fraud, and perjury all are primarily directed to the obtaining of Defendant's patent, the validity of which is not before the Court. (See (fn, supra). This report and recommendation also does not involve the validity of Plaintiff's patent.

Because this report is based upon the objective (i.e. the schematic and prosecution history) evidence of the two competing products, and the applicable law, there appear to be no genuine issues of material fact relating to infringement and Defendant is entitled to judgment as a matter of law. Rule 56 (c), Fed. r. Civ. P. Anderson V. Liberty Lobby. Inc., 477 U.S. 242, 247-248 (1986); Celotex Corp. v. Cartrett, 477 U.S. 317, 322-323 (1986). Accordingly, it is recommended that Defendant's Motion for Summary Judgment of Non_Infringement be **GRANTED.**

The parties are advised that any objections to this Report and Recommendation must be filed with the court within ten (10) days after they are served with a copy, or further appeal from Judge Edmund's acceptance there of is waived.

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF MICHIGAN

SOUTHERN DIVISION

ROSA ROBINSON, ET AL.

Plaintiff (s), Case No. 00-70272

V. HONORABLE Nancy G. Edmunds

FAKESPACE LABS,

Defendant (s)

ORDER GRANTING PLAINTIFF'S REQUEST FOR MORE TIME TO FILE OBJECTIONS TO THE MAGISTRATE"S REPORT AND RECOMMENDATION ENTERED SEPTEMBER 4, 2001

This matter comes before the court on Plaintiff's request to have additional time to file objections to the Magistrate's Judge's September 4, 2001 Report and Recommendation. Being fully advised in the premises and having reviewed the record and the pleadings, the court **GRANTS** Plaintiff's request. Plaintiffs' objections shall be filed on or before Friday September 21, 2001.

SO ORDERED.

Nancy G. Edmunds

U.S. District Judge

Dated : Sept, 20, 2001

APP. 38

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF MICHIGAN

SOUTHERN DIVISION

ROSA MARY ROBINSON,

WILLIAM FREDERICK ROBINSON,

and WILLIAM HENRY ROBINSON

Plaintiffs and Counter-Defendants

CIVIL ACTION NO. 00-CV- 7027-DT

District Judge Nancy G. Edmunds

Magistrate Judge Thomas A. Carlson

PLAINTIFFS RESPONSE AND OBJECTIONS TO MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

Now comes Plaintiffs William H. Robinson, Rosa Robinson and William F. Robinson, in ProPer, jointly responding to the Magistrate Judge's Report and Recommendation

Your Honor, Judge Carlson stated on his report that Summary Judgment of Non-Infringement should be granted, as defendants electronic gloves clearly do not infringe Plaintiff's patent for similar gloves, and Plaintiff's are either precluded from arguing equivalent infringement or have failed to present a genuine issue of material fact regarding the same, he also stated that technological advances that would have lain in the unknown, undefined zone around the literal terms of a narrowed claim under flexible bar approach will go wasted and underdeveloped due to fear of litigation. The public will be free to improve on the patented technology and design around it without being inhibited by the threat of a lawsuit because the changes could possibly fall within the scope of equivalents left after a claim element has been narrowed by amendment for reason related to patentability.

We object to the Magistrates judge's Report and Recommendation> we have submitted material facts to this court showing that Defendants did not invent electronic computer or technology that would have lain in the unknown. Defendants did not invent computer gloves that could be used for a mouse /joystick. The fact is, and the truth is, Defendants copied Plaintiffs ideas and designed their (Fakespace) gloves to function the same as Plaintiffs. Plaintiffs gloves could be manufactured many different ways without departing fro, the principal operation of the device. **NOTE** ** it was not defendants invention, or no accident, nor was Ian McDowall, or anyone at Fakespace, the brainchild behind the invention of electronic computer gloves. Defendants thought they could get away with stealing Plaintiffs idea and design, that's why defendants used two connectors instead of one, that defendants used resistors on each finger tip and thumb, that defendants used a two glove device, that defendants device relied on both gloves to function to its full capacity, that defendants gloves could be programmed for other functions, that defendants gloves could be used for many gestures, that defendants gloves were made of fabric, that defendants gloves could be used to play computer and video games, that defendants gloves could replace the joy

mouse / joystick, etc. The defendants, (Fakespace labs.) gloves are very similar to Plaintiffs gloves, and can be used for the same functions. Plaintiffs gloves will allow an operator to stand in front of a wall-sized 3-dimensional computer screen and simulate various conditions, and can be programmed for many functions and gestures, the same as Defendants gloves.

Judge Carlson stated that in order to prove infringement, "Plaintiff's must prove that all the limitations on claim 1 are present in Defendants gloves, because if any one limitation is missing there is no literal infringement, and he also stated as paraphrased by Defendant (and not challenged by Plaintiff's) the claim requires :

a, two gloves connected to a single resistor

b, contacts on all the fingers and both thumbs

c, wires connecting the finger contacts to the single connector

d, wires connecting the thumb leads to a common terminal on the connector

e, a single resistor

f, the resistor in line between both thumbs contacts and the connector common terminal

Plaintiffs did challenge defendants gloves, and stated that defendants gloves were literally the same. Plaintiffs contends that Defendants gloves does literally infringe their patent because:

(1) Defendants gloves connects to a connector (2) contacts on the fingers and thumbs (3) wires connecting the finger contacts to a connector (4) wires connecting the thumbs to a terminal on the connector

(5) resistors (6)resistors in line with the thumbs on the computer

(7) gloves is used to replace the joystick/mouse

(8) gloves can be used for work or play **(9)** can be-interfaced, and be used on different video and computer systems etc. **(10)** allows an operator to stand in fron of a wall-size, 3-dimensional computer screen and simulate various conditions.

Defendants Willfully copied Plaintiffs idea and design. Instead of using one connector, Defendants used two, and instead of using one resistor, that could be used, Defendants used a series of resistors, in line with each finger of their gloves, defendants deliberately copied plaintiffs idea, then marketed, and manufactured plaintiffs idea and design.. The defendants had full knowledge of plaintiffs gloves before their (Defendants) gloves were put on the market, and before they applied for a patent..

NOTE ** The district Court, in summarizing the legal standard for determining willfulness for the purpose of increasing damages, correctly stated that one of the relevant factors is whether the infringer deliberately copied the ideas of another," citing in Designer re Hays Microcomputer Products, Inc. 982 F .2d 1527, 25 USPQ 2d. 1241 (Fed. Cir. 1986). Neither Hayes nor Butt holds or states that any copying must be "slavish coping in order for it to be a relevant factor in determining willfulness,. Instead they respectfully state that an inquiry is whether the infringer "intentionally copied the ideas of another,'

Hays, 982 F. 2d at 1543, 25 USPQ 2d at 1253, or "deliberately copied the ideas of another design of another, Bott, 807 F. 2d. at 1572, 1 USPQ 2d at 1213.

Intermedics' reliance upon State Industries is misplaced. The court in State Industries did discuss "Slavish copying," but it di so to distinguish the case before it from Milgo Electronic Corp. v. United Business Communications, Inc. 623 f. 2d 645, 206 USPQ 481 (10th Cir), cert. denied, 449 Us 1066 (208) USPQ 376) (1980). The state Industries does not require a finding of "slavish copying" in order for copying to a factor deciding the question of Willfulnes.

NOTE ** INFRINGEMENT IS NOT AVOIDED BY MULTIPLICATION OR UNIFICATION OF ELEMENTS OR PARTS BY MAKING SEPARATE PARTS INTEGRAL OR VICE VERSA, WHERE SUCH FEATURE IS NO PARY OF THE REAL INVENTION. Infringement cannot be escaped by merely joining two parts into one integral part or vice versa, if the same results are accomplished in substantially the same way. Bundy Mfg. Co. v. Caster Sockett Co., 113 Fed. 162. And infringement is not averted by uniting two elements of a machine or manufacture into one integral part, if the united part performs the same function in substantially the same way, as did separate parts before the union, nor by separation of one integral part into two, the two parts doing substantially what was done by a single part. **Changing the relative position or reversal of te parts of a machine or manufacture does not avert infringement, where the parts transposed perform the same respective functions after the change as before.** Adams v Mfg. 3 Bann & Ard J. F cas No 56; and Hoeltke v C. M. Kemp Mfg. Co., 80 F2d. 912. CA 4. See also Revere Camera Co. v. Eastman Kodak Co. 71 F. 65 (DC ND III).,, 73 USPQ 31

NOTE ** Research, source, Expansion of Claims, Patent Claims 2nd edition, Anthony W. Deller 1, Sections 1-323

When Plaintiffs first applied for a patent in 1984, their electronic gloves were a novelty, there were no other gloves of this kind invented.

Realisty, Defendants did not design around plaintiffs patent, they willfully copies plaintiffs idea and design.

Judge Carlson stated that "there is no evidence that the resistors accomplish the same result', Plaintiffs disagree. Plaintiffs can easily prove that the resistors are used for the very same thing in the Defendants gloves to accomplish the very same thing as the resistors in Plaintiffs gloves. If what Judge Carlson says is true, my question is, then why does the defendants gloves have resistors? Why didn't the defendants tell the patent office the truth when they applied for their patent.

Why was the Defendants evasive about the resistors with the patent office. Why didn't the Defendants disclose the "**Real function**" of the resistors that is used in their gloves to the patent office ? Why didn't the defendants tell the patent office that their (Fakespace) gloves had resistors in series in line on every finger? Why did the Defendants tell the patent office that there was no wire needed to sense contact in either fingertip ? Defendants admitted their gloves were connected to wires and a connector. Mr. Crockett stated, *"yes your honor, we have a long wire that goes off to the computer and gets connected to the computer, and both- we typically use it with both gloves, so the gloves can get connected into the computer with a separate connector, and it looks identical to the connector (plaintiffs) we have here.* **Exhibit 13, see copy of court transcript pg. 26**.

Why did attorney K. Crockett state on his Complaint for Declaractory Judgment of Non-Infringement and Invalidity on pg. 4, dated Decc. 9. 1999, "that the Pinch Glove is not used for providing signals to a joystick? **Exhibit 13 A.**

At the Hearing the Defendants testified that their Pinch gloves was designed to replace the joystick. **Exhibit 13 B, copy of document defendant submitted to the patent office. also see copy of testimony of defendants stating,** " so basically the glove (pinch glove) has replaced either the joystick or the mouse, its replaced all that stuff. **Exhibit 14, court transcript on pg. 20, and 22. Judge Carlson also stated that "Plaintiffs allegations of unclean hands, conspiracy, fraud and perjury are primarily directed to the obtaining of Defendants patent, the validity of which is not before this court.**

Plaintiffs are aware that the validity of Defendants patent is not before this court, However, Plaintiffs feel that the unclean hands issue should be taken very serious consideration by this honorable court, because it clearly shows that the defendants are not creditable, and will lie to this court without conscious

without conscious, to win and get what they want. The truth is, Defendants **"Did willfully copy Plaintiffs idea and design.**

INFRINGEMENT IS NOT AVOIDED BY THE ADDITION OF AN ELEMENT PART INGREDIENT OR STEP TO THOSE SPECIFIED IN A CLAIM ". The general rule is that addition of an element, part ingredient or step to those specified in a claim does not avoid infringement. If an infringer adopts the patented device in its entirety and in addition merely adds elements to it, which do not destroy its function, infringement is not avoided. 1900 Washer Co. et al v Cramer et al, 169 F 629 (CA) 3).**Source, Patent Claims 2nd edition, Anthony W. Deller 1 Sections 1-323.**

CHANCE OF SEQUENCE OF THE STEPS OF A PROCESS AS CLAIMED WITHOUT LOSS OF FUNCTION OR RESULT DOES NOT AVOID INFRINGEMENT. In such cases there is infringement because the processes are substantially the same rather than because they are equivalent. Equivalency implies a difference in means coupled with similarity ot identify in function or result. In Maliganan[V Germania Electric Lamp Co. 169 F. 299 at 301 (Dc D NJ), Judge Cross Said :

"Accepting this, then as proven in the case, the Defendant does not avoid infringement by merely transposing the steps of the process. Transposition of the various steps is, under such circumstances mere evasion, Morever, the testimony proves that some of the transposed steps were performed well-nigh simultaneously. Then too, it will be noticed that no step was omitted, nor was any new one introduced : but each was used substantially as the patent

intended it should be to accomplish the desired result.

Judge Cross followed that statement with a long, though discussion on pertinent authorities :

Infringement od a process patent may occur where precise identity does not exist in respect of the process claimed on the patent, and that used by the infringer. **see also Toledo Rex spray Co. v California Chemical Co., 268 F 201 mod in part 30 F2d 495, (CA6); Donner v. Sheer Pharmacal Corp., 64 F2d. 217, 223, 17 USPQ 117, (CA 8) see also: Reece Button Hole Mach Co. v Globe Buttonhole Machine Co. ,61 F 958 (CA 2); Edwards Mfg. Co v National Fireworks Dist. Co. 272 F 23 (CA 6) Source, Patent claims 2nd edition, Anthony W. Deller 1 sections 1 -323**

Plaintiff's are appealing to this Honorable Court to vacate the Magistrate Judge's Report and Recommendation that Non-Infringement should be granted to Defendants, Fakespace Labs. In view of the fact that Defendants willfully copied Plaintiffs idea and design of electronic gloves, and Defendants gloves and design are the same as Plaintiffs gloves. and functions in the same manner as Plaintiffs gloves, and tghe fact that Plaintiffs had their patent first, and Defendants have un-clean hands, that is very relavenr to this case, and should be addressed. Defendants claim of Non-Infringement should be denied.

Note ** ***Creditabikity, determination the weighting of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge, whether he is ruling on a motion for a directed verdict. The evidence of the non-movement is to be believed, and all justifiable inferences are to be drawn in his favor".*** *Ante at 255*

Respectfully Submitted, September 21, 2001

William F. Robinson

Rosa M. Robinson

APP. 46

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF MICHIGAN

SOUTHERN DIVISION

Rosa Mary Robinson, William Frederick Robinson, and William Henry Robinson,

Plaintiffs and Counter-Defendants

Case No. 00 - 70272

Hon. Nancy G. Edmunds

V.

Fakespace Labs. Inc.

Defendant and Counter-Plaintiff

ORDER ACCEPTING MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

This matter has come before the court on the Magistrate Judge's Report and Recommendation. Being fully advised in the premises and having reviewed the record and the pleadings, including the Report and Recommendation and any objections thereto, the court hereby ACCEPTS and ADOPTS the Magistrate Judge's Report and Recommendation. It is further ordered that defendants motion for judgment is hereby GRANTED, and the case is hereby DISMISSED.

SO ORDERED

Dated Sept. 24, 2001

"S/_____"

Nancy G. Edmunds

U.S. District Judge

APP. 47

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF MICHIGAN

Southern Division

ROSA MARY ROBINSON, WILLIAM FREDERICK ROBINSON, and WILLIAM HENRY ROBINSON,

Plaintiffs and Counter-Defendants Case No. 00-7022

Hon. Nancy G. Edmunds

V. FAKESPACE LABS. INC.

Defendant and

Counter-Plaintiff

JUDGMENT

This court having reviewed and fully considered the pleadings filed by the parties, the Magistrate's Report and Recommendation, and any objections thereto in accordance with 28 U S C s 636 (b)(1), and the court further having made a denovo determination of those portions of the Report and Recommendation to which objections may have been made, and for reasons set forth in an Order dated Sept. 26, 2001 and filed herein :

The Report and Recommendation of the Magistrate is hereby accepted and adopted as the findings and conclusions of the court

IT IS HEREBY ORDERED AND ADJUDGED that defendants motion for summary judgment is hereby GRANTED and the case is hereby DISMISSED.

SO ORDERED.

Dated Sept. 26, 2001 "S/_____"

Rosa Robinson

W & Rosa Robinson

Phone (313) 491-5212

Fax (313) 834-5903

RE: Letter Faxed 10/6/95

October 23, 1995

Dear Rosa Robinson,

We received U.S. Patent 4,613,139 after receiving your letter. We cannot understand your basis for asserting infringement. While representing a vast improvement over the prior art. our glove is quite distinct from the glove which is described and claimed in your patent. If you truly feel that our glove infringes claims of the patent, we would be interested in hearing your explanation.

We note that Shindler, U.S. Patent 1, 046,225 issued December 3, 1912 and Bear, U.S Patent 4,450,176 issued September 10, 1985 both show gloves with electrodes on the finger tips. It seems to us that we are free to make gloves with electrodes on fingertips. We cannot envision any tenable contary position.

Although you indicated that you are the co-inventor of the device claimed in U.S. Patent 4,613,139, the face of the patent indicates that William H. Robinson II, is the inventor. It does not appear that you are the actual inventor, and we are accustomed to dealing with the actual inventors in discussions of this sort. As a third party, you have no right to complain of any potential infringement. Sincerely,

"S/_____"

Ian McDowall

APP. 49

CROCKETT & CROCKETT

Patent & Trademark Law

May 20, 1999

Rosa W. Robinson

P.O. Box 06704

Detroit MI. 48206

Tel: 313 883 0728

Subj: Demand Letter, U.S. Patent 4, 613,139

Dear Ms. Robinson:

Your letter to Mr. Angelillo of Fakespace, Inc. has been referred to me for further action. I am informed that several years ago. you made a similar demand that Fakespace take a license to your patent. The facts pertinent to your claim of infringement remain the same, and the Fakespace Pinch Glove does not infringe the claims of your patent.

We are certain that the Pinch glove does not infringe your patent, and we intend to respect your patent rights by avoiding the production of a glove which is covered by your claims. If you do not have a pair of Pinch gloves, you may inspect a set of schematics available for inspection at Fakespace corporate headquarters. (The high cost of the device and the trade secret nature of the schematics rule out the possibility of transmitting samples and copies to your office.)

Among other missing limitations, the Pinch gloves do not incorporate resistors between the thumb electrodes and the connector. This alone is sufficient to clearly rebut any claim of infringement. While we are quite confident of the correctness of our analysis, if you believe that our analysis on this point is incorrect, or overlooks any material facts, we would be willing to consider a deeper explanation of your concerns

In our recent telephone conversations, you suggested that your attorneys considered the absence of the resistor to be immaterial. I assure you that it is dispositive. Review of the arguments your attorney made to the patent office to obtain your patent revels that he argued that "resistor 24 is critical to the invention." Thus, your patent cannot be asserted against any glove without a resistor.

We cannot justify licensing or purchasing your patent at any significant price. We do not need the claimed features, and we see no need to the claimed features, and we see no technical benefit to the claimed features which any of our competitors might find valuable. Additionally, our sales volume for this product is rather small, only about $10.000 worth of systems this quarter, and therefore does not warrant licensing.

After comparison of our Pinch glove with the claims of your patent. I believe that no reasonable attorney would file suit against Fakespace. It is encountered an attorney who suggests that he might successfully sue Fakespace, I urge you to seek a second opinion. Patent law suits are extremely expensive, and you will end up spending an enormous amount of money if you proceed with ligation. Even if you pay only the costs, the typical costs for a patent case are very high, and I fear that you will be spending tens of thousands of dollars pursuing the case to find that it can not be won.

Sincerely.

"S/_____"

K. David Crockett

APP. 51

CROCKETT & CROCKETT

Patent & Trademark Law

December 20, 1999

Rosa Robinson

8631 Griggs

Detroit, MI 48204

William Henry Robinson, II

8631 Griggs

Detroit, MI 48204

William Frederick Robinson

8631 Griggs

Detroit, Michigan 48204

Case : Robinson, et. v. Fakespace, Inc.,

Case Number 99-932853 CZ

Subj : Transmittal

Dear Mr. William F. Robinson,

Enclosed please find our letter to the District Court requesting that this case be dismissed.

Sincerely,

""S/_____"

K. David Crockett

APP. 52

CROCKETT & CROCKETT

Patent & Trademark Law

December 20, 1999

The Honorable Louis F. Simmons

Third Circuit Court of the State of Michigan

2 Woodward Ave.

Detroit, Michigan 48226

Case : Robinson, et al V. Fakespace, Inc.

Case Number 99 - 932853

Subj. Special Appearance

Your Honor :

This letter is a special Appearance to contest jurisdiction. The case of Robinson, et al v. Fakespace., Inc. Case number 99 932853 CZ was recently filed in the third Circuit Court and assigned to your courtroom. The complaint alleges that Fakespace Inc. infringes U.S. Patent 4,613,139 and prays for ten million dollars in damages for patent infringement.

Pursuant to 2B USC s 1338 (a), the district courts of the United States "shall have original jurisdiction of any civil action araising under any Act of Congress relating to patents. Such jurisdiction shall be exclusice of the courts of the states in patent. plant varirty presection and copyright cases." Obviously, no state court may entertain a suit for patent infringemant.

The exclusive jurisdiction of the federal courts over patent

infringemnt acyions is so finaly entrennched and so clearly insusceptible to any argument that we propose that the court dismiss the action responsive to this letter, without requiring formal pleadings and motions. Indeed, your local codes most probably forbid the plaintiff from insisting that we bring a motion for relief of which we are absolutely entitled.

We make no argument on the merits here. However, the filing of a patent complaint in a state court is clearly frivolous. We hope to avoid the expense of making a formal special appearance, for which we will feel compelled to seek costs and fees under M. C.L A. 600. 2591

As a convience to the court and plaintiffs, we have provided a copy of 28 USC s 1338 as reprinted in Federal Civil Judicial Procedure and Rules (West 1999 Edition).

I have served a copy of this letter and enclosures on the plaintiffs, at the address indicated on this complaint, via Express Mail on December 20, 1999,

Sincerely,

"S/_____"

K. David Crockett

APP. 54

CROCKETT & CROCKETT

Patent & Trademark Law

January 12, 2000

The Honorable Louis F. Simmons

Third Circuit Court of the State of Michigan

1921 Coleman Young Municipal Center

Detroit, Michigan 48226

ATTN : CAROL SMITH

Case : Robinson, et al. V. Fakespace, Inc.

Subj : Special Appearance

Your Honor,

Enclosed please find an additional copy of our letters dated December 20, 1999 and January 5, 1999. Post office records (enclosed) indicate that the original letter was delivered to the Court's 2 Woodward Avenue address on December 22, 1999 and to the Plaintiff's on December 22, 1999. Post Office records (enclosed indicate that the second copy and its cover letter were delivered to the Court's Coleman Young Municipal Center address on January 6, 2000.

Our letters are presented in order to informally deal with this case only to the extent necessary to point out the Court's lack of subject matter jurisdiction in this suit for patent infringement. Accordingly, we again ask that this suit be dismissed.

We understand that the Plaintiff's have brought a motion asking this court to forebear from dismissing this case despite the obvious lack of subject matter jurisdicitor. We see no reason to do so, since the Court clearly cannot act on the complaint. We also understand that the Plaintiff's motion asks this Court to take some ill-defined action

of "moving" the case to federal court. This court has no powder to do so, and cannot direct the federal courts to take any act, and should not act as counsel to the Plaintiffs. We also understand that the Plaintiffs' motion offers substantive evalution of the merits of the case in this special appearance. The federal Courts have exclusive jueisdiction to evalute the merits of the case and the procedures to be followed in litigating the case. Any action on the emergency motion would be null and void, so for the sake of efficiency we request that the court ignore it as moot.

If the Court desires to go forward with the hearing on the motion, we request to make an additional special appearance by telephone, and seek the Court's instruction to arrange a telephone hearing.

I have served a copy of this letter and any enclosures to the plain tiffs at the address indicated on the complaint. Via Express Mail, on January 11, 2000.

Sincerely,

"S/_____"
K. David Crockett, Esq.

APP. 56

CROCKETT & CROCKETT

Patent & Trademark Law

January 5, 2000

The Honorable Louis F. Simmons

Third Circuit Court of the State of Michigan

1321 Coleman A, Young Municipal Center

Detroit, Michigan 48226, ATTN. : Carol Smith

Case : Robinson, et al. V. Fakespace, Inc.,

Case Number 99-932853 CZ Subj. : Special Appearance

Your Honor,

Enclosed please find an additional copy of our letter dated December 20, 1999. Post office records (enclosed) indicate that this letter was delivered to the court's 2 Woodward Avenue address on December 22, 1999 and to the Plaintiff's on December 22, 1999.

As indicated in the original letter, this case is a complaint for patent infringement for which state courts clearly and unarguably lack subject matter jurisdiction. By this informal special appearance, we seek the most efficient disposition for the Defendant, the Plaintiff, and the court, and ask that the Court sus sponte dismiss the case without further action by the Defendant. Sua Sponte action is clearly permitted under the statues and rules governing Michigan State Courts.

I have served a copy of this letter and any enclosures to the plaintiffs at the address indicated on the complaint, via Express Mail. On January 5, 2000.

Sincerely

"S/_____"

K. David Crockett

US006128004A

United States Patent [19]

McDowall et al.

[11] Patent Number: 6,128,

[45] Date of Patent: Oct. 3

[54] VIRTUAL REALITY GLOVE SYSTEM WITH *FABRIC CONDUCTORS*

[75] Inventors: Ian E. McDowall, Palo Alto; Mark T. Bolas, Mountain View; Russell C. Mead, Jr., San Francisco; Christian Greuel, Boulder Creek, all of Calif.

[73] Assignee: Fakespace, Inc., Mountain View

[21] Appl. No.: 08/623,528

[22] Filed: Mar. 29, 1996

[51] Int. Cl.[7] G09G 5/08

[52] U.S. Cl. 345/158; 345/156

[58] Field of Search 345/156, 157, 345/158

[56] References Cited

U.S. PATENT DOCUMENTS

1,046,225	12/1912	Schindler .	
4,414,537	11/1983	Grimes	340/365
4,540,176	9/1985	Baer	463/37
4,613,139	9/1986	Robinson	273/148
4,988,981	1/1991	Zimmerman et al.	
5,184,319	2/1993	Kramer	
5,280,265	1/1994	Kramer et al.	
5,442,729	8/1995	Kramer et al.	
5,526,022	6/1996	Donahue et al.	
5,581,484	12/1996	Prince	

OTHER PUBLICATIONS

Foley, Interfaces For Advanced Computing, XX Sc *American 126 (Oct. 1987).*

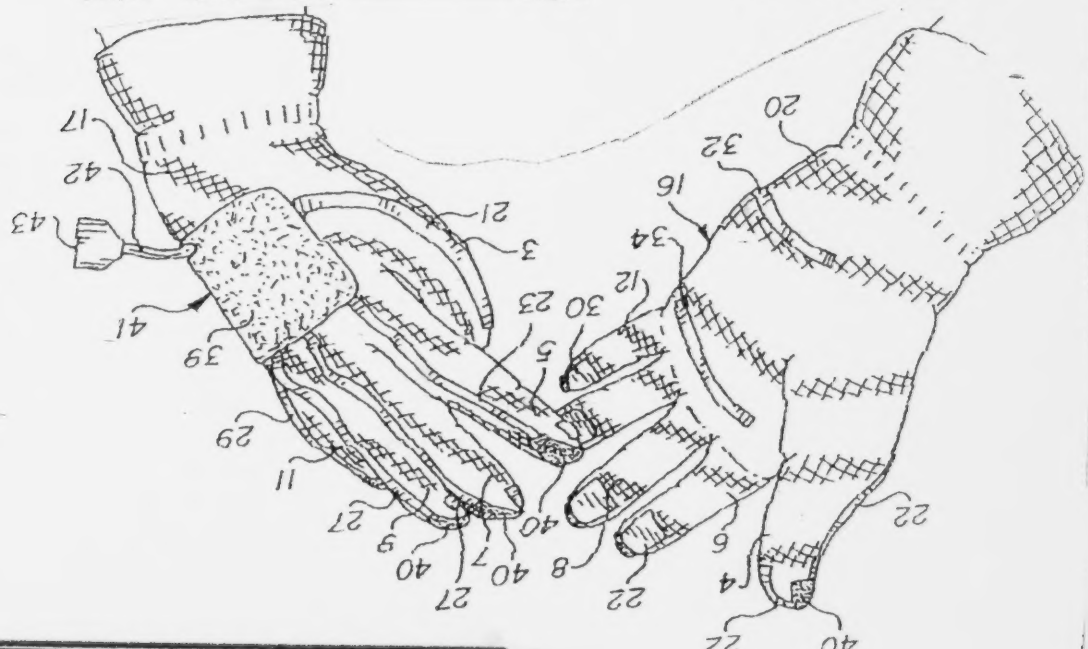
Primary Examiner—Matthew Luu

Attorney, Agent, or Firm—K. David Crockett; Croc Crockett

[57] *ABSTRACT*

A data input glove for use with a computer system, *reality system or the like*, with numerous electrodes p the glove and interconnected with electronic c enabling sensing of contact between any combinatio electrodes, with electrodes made of flexible elec conductive fabric, silk-screened electrically conc paint or the like.

1 Claim, 7 Drawing Sheets



BEST AVAILABLE COPY

Specification

Be it known that Ian E. McDowall, Mark T. Bolas, Russell Mead, Christan Greuel, James Hackbush, have invented a new and useful

Virtual Reality Glove System with Fabric Conductors

of which, the following is a specification

212 / 028

Declaration for Utility Application

As a below inventor, I hereby declare that:

My residence, post office address and citizenship and as stated below next to my name: I believe that I am the original, first and sole inventor (if only one name is listed below) or an original, first and joint inventor, i(f plural names are listed below) of the subject matter which is claim,ed and for which a patent is sought on the invention entitled Virtual Reality Glove system with Fabric Conductors the specification of which is attached hereto was filed on March 29, 1996 as Application

No. 08 /623,528 and was amended on

I hereby state that I have reviewed and understand the contents of the above identified specification, including the claims,an amended by ant amendment (3) referred to above. I acknowledge the duty to disclose information which is material to the patentability of this application in accordance with Totle 37, code of Federal Regulations 7.56 (a). I hereby claim foreign foreign priority benefits under Title 35, United States code 119, of any foreign Application(s) for patent or inventor's certificate listed below and have also identified below any foreign application for patent or inventor's having a filing date before that of the application on which priority is claimed.

Application Number	Country	Filing date
Priority claimed		

I hereby claim the benefit under Title 35, United States Code 120 of any United States Application (s) listed below and, insofar as the subjrct matter of each of the claims of this application is not disclosed in the prior United States applicationin the manner provided by the first paragraph of Title 35, United States Code 117 I acknowledge the duty to disclose the prior application and the national or PCT international filing date of this application

Application Number Filing Date

Status First Inventor: Full Name: Ian McDowall

Residence: Palto Alto Ca Citizenship :

Post Office Address : Fakespace Inc. 241 Polaris Ave. Mountain View, CA 94043

Second Inventor: Full Name: Mark T. Bolars

Residence: Mountain View California Citizenship: USA

Post Office Address: Fakespace Inc. 241 Polaris Ave. Mountian View, CA 94043

Third Inventor: Full Name: Russell Mead Jr.

Residence: San Francisco CA Citizenship: USA

Post Office Address: Fakespace Inc. 241 Polaris Ave. Mountain View CA 94043

Fourth Inventor: Full Name: Christan Greuel

Residence: Boulder Creek CA Citizenship: USA

Post Office Address: Fakespace Inc. 241 Polaris Ave Mountain View, CA 94043

Fifth Inventor: Full Name :

Residence: Citizenship:

Post Office Address:

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information an the like , are believed to be true, and further that these statements were made with the knowledge that willfull false statements and the like so made are punishable by fine or imprisonment, or both under Section 101 and Title 18 of the Status Code, and that such wilful false statements may jeopardize the validity of the application, and any patent invention.

Date: August 22, 1996	First Inventor: "S/_____"
Date: August 22, 1996	Second Inventor "S/_____"
Date: August 22, 1996	Third Inventor: "S/_____"
Date: August 22, 1996	Fourth Inventor: "S/_____"
Date: August 22. 1996	Fifth Inventor: "S/_____"

APP. 62 *212/028*

POWER OF ATTORNEY

Fakes Inc. , assignee (s) of the application for the United states Letters Patent for Virtual Reality Gloves System with Fabric conductors, invented by Ian E, McDonnell, Mark t. Bolas, Russell Mead, Christian James Hackbush filed on date herewith, or having Serial No. 08/623 528 filed on March 29, 1996, a copy of the assignment of which is attached hereto, do (es) hereby appoint as attorneys of record with full power of substition and revocation, to prosecute this application and transact all business in the Patent and Trademark Office connected therewith: K. David Crockett, Esq., Reg. No 34, 511 and Robert Fish Esq., Reg. No/ 33,880. Please send all correspondence to:

K. David Crockett, Esq.

4093 Tropic Way

Los Angles CA 90065

(213) 227-8519 or Fax (213) 227-1089

I the undersigned, declare that I am the above-identified application, or, if the assignee is a corporation, partnership or other association, I am authorized to make this appointment on behalf of the assignee and I futher declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Assignee's Name Fakespace, Inc.

Assignee's Address 4085 Campbell Ave. Menlo Park CA 94025

Signature: "S/_____: Date: July 5, 1996

Issuant's Name: Ian E. McDowall

Issuant's Address 4085 Campbell Ave. Menlo Park CA 04025

APP. 63

FOR IMMEDIATE RELEASE

EASY TO USE GLOVE-BASED INTERFACE FOR WORK AND PLAY IN VERTIAL WORLDS NOW AVAILABLE FROM FAKESPACE

Menlo Pardis Calif. — May 5, 1995— Fakespace , Inc. today introduced Pinch, a hand gesture inter-face system based on a pair of cloth gloves containing electris sensors in each fingertip, that allows developers and users of immwesive visual figuration applications to easily and effectively interact with visual enviorments.

Pinch is the first commercially available visual enviorment glove device based on conductive sense technology, which provides significant implementation, performance and cost benefits compared to other glove technologies. It also marks an important expansion of Fakesspace's line of Reel Tools for Virtual Worlds, which include a family of readily accessible high-evolution immersive-displays, software and hardware to support virtual enviorment applications, and consulting services.

"Pinch gloves represent a new way of working in virtual worlds" said Ian McDowall, vice president of Fakespace Inc. "Our objective is to provide developers with no entirely sensor but incredibly easy way to interact with simulations they are building. The Pinch G;loves are not mechanically complex, so the resulting design is both simple and powerful."

"Pinch gloves make it possible to use representation of hand interactions to productively work within a three-dimensional (3D) computer simulation. Each glove contains five sensors (one in each fingertips) contacts between any two or more digits completes a conductive path. connecting a variety of motions based on these simple "pinch" gestures can be defined by the application developer. To track the motion of each "Virtual" hand within an application, each glove also has a back-of hand mount to accommodate pollsereus ar other sensors.

APP. 64

Fakespace Pinch™ Glove System

Installation Guide and User Handbook

Document GL-9001
Revision C

APP. 65

Fakespace
Pinch Glove System
Installion Guide
and
User Handbook
November 1995

@ 1996, 1997

Fakespace, Inc.
241 Polaris Avenue
Mountain View, CA 94043
415 -688 1949 fax

Every effort has been made to assure that the information contained in this document is correct and reliable, however, no guarantee can be made as to the accuracy of the contents. Specifications are subject to change without notice at

any time

All brand or product names are the property of the holders.

GL - 9001 Rev C

APP. 66

CROCKETT & CROCKETT

Patent and Trademark Law

24012 Calle De La Plata Suite 4oo

Laguna Hills, California 92653

August 10, 2000

Rosa Robinson

8631 Griggs

Detroit, Mi 48204

William Henry Robinson, II

15211 Salem Court

Redford, Michigan 48239

William Frederick Robinson

8631 Griggs

Detroit, Michigan 48204

Tel: 313 491 5212 Fax: 313 834 5903

Case : Fakspace Labs, Inc. V. Robinson er al, C99-05258 WHA

Subj : Subpoena

To the Defendants :

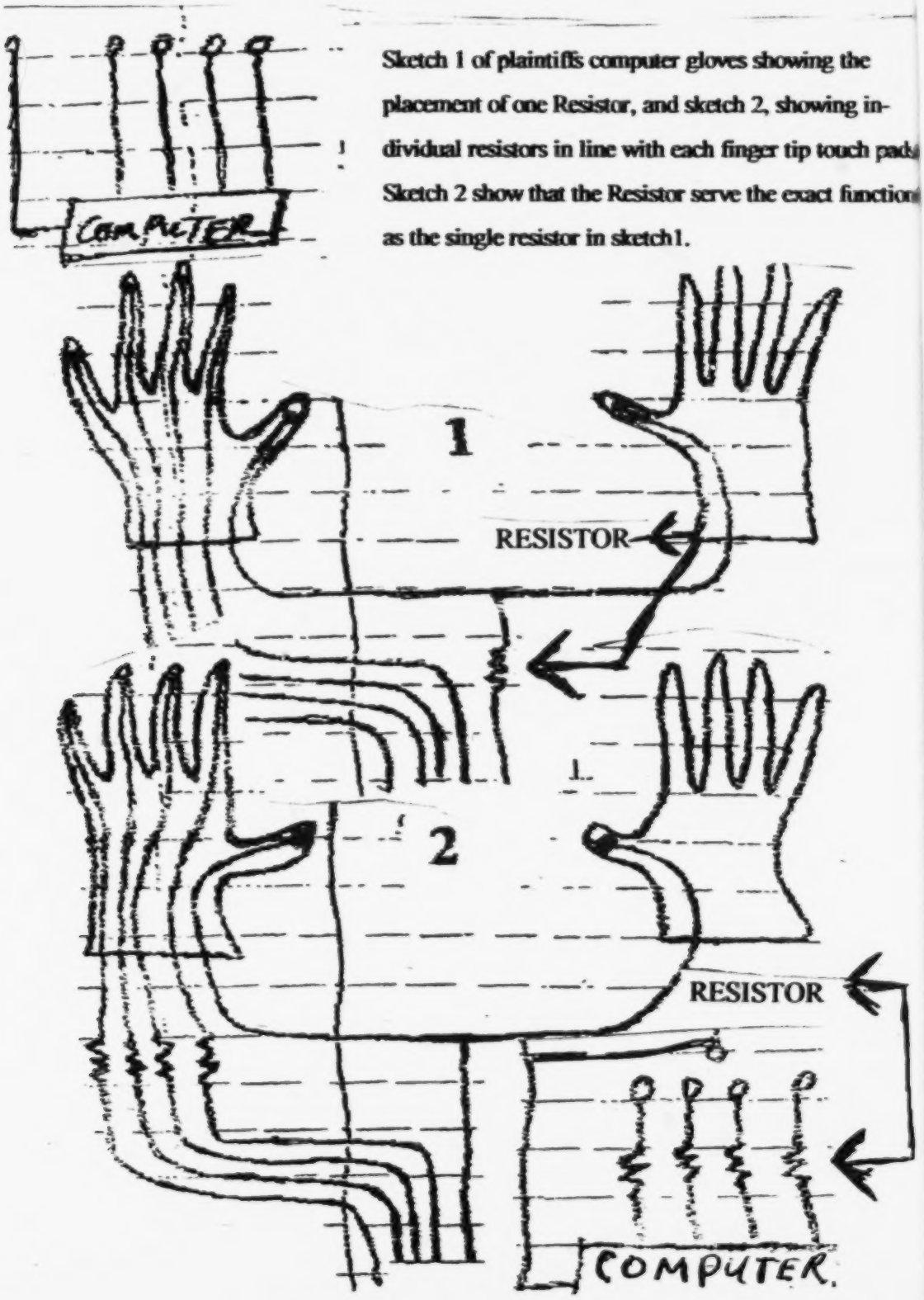
The subpoena presented to Fakespace Labs. by certified mail on August 1, 2000 will not be respected. It was not issued by a court having jurisdiction over the defendabts, and was not issued by a person having authority to issue subpoenas.

Sincerely

"S/_____"

K. David Crockett

Sketch 1 of plaintiffs computer gloves showing the placement of one Resistor, and sketch 2, showing individual resistors in line with each finger tip touch pads Sketch 2 show that the Resistor serve the exact function as the single resistor in sketch1.



K. David Crockett, Esq.
Crockett & Crockett
22362 Rosebrair
Mission Viejo, CA 92692
California State Bar. No. 155,455

Attorney for Plaintiff
FAKESPACE LABS, INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

FAKESPACE LABS, INC,
Plaintiff
VS.
ROSA MARY ROBINSON
an individual
WILLIAM FREDERICK ROBINSON,
an individual : and
ROSA MARY ROBINSON, WILLIAM
FREDERICK ROBINSON, WILLIAM
FREDERICK ROBINSON II, an unknown entiti
Defendants

COMPLAINT FOR DECLARATORY JUDGMENT

1. Plaintiff, Fakspace Labs, Inc. complains against defendants Defendants Rosa Mary Robinson, Wiliam Frederick Robinson and William Frederick Robinson II, as follows :

SUBJECT MATTER JURISDICTION

2. This is a suit for Declatory Judgment of non-fringement and invlidity of Robinson, Video Control Gloves. U.S. Oatent 4 ,613, 139 (Sep. 23, 1996). This court has original and exclusive jurisdiction pursuant to TiTle 28, United States Code. Section 1338 (a) because this action arises under the Patent Laws of the United States (Title 35, United States Code, Section 1, et seq,) and pursuant to the Declatory Judgment Act, Title 28, United States Code, Section 2201.

VENUE

3. Venue is proper in the Northern District of California pursuant to 28 U.S.C. S 1391 (2(because a substantial portion of events or omissions giving rise to the claims occured in this District. Plaintiff's manufacture and sell the accused device in Mountian View California.

INTRADISTRICT ASSIGNMENT

4. Assignment in the District Court for the Northern District of California, San Jose, is proper under Civil Local Rules because the plaintiff Fakespace Labs, Inc. has its principal place of business in Mountain View, California.

BACK GROUND ALLEGATIONS

5. Plaintiff, Fakespace Labs, Inc. is a corporation organized and existing under the laws of the state of California, having a place of business at 241 Polaris Avenue, Mountain View, California

6. Defendants Rosa Mary Robinson, William Frederick Robinson and William Frederick Robinson II, individuals and / or a partnership or other legal entity not know to Plaintiff, reside or have a place of business at 8631 Griggs Road, Detroit Michigan 48074.

7. Defendants claim to own all rights, totle ans interest in and to U.S. Patent No 4, 613, 139, entitled Video Control Gloves.

8. Defendants have asserted creating a justicable contorversy which is a cloud upon Plaintiff's business.

9. Plaintiffs have filed a patent infringement action in the Third Circuit Court, State of Michigan, alleging that the Virtual reality system input device known as the Fakespace Pinch Glove infringes U.S. Patent No. 4, 613, 139.

NON-INFRINGEMENT

10. Plaintiff's Pinch Glove does not infringe any of the claim of U.S. Patent No. 4, 613, 139.

11. U.S. Patent No. 4, 613, 139 contains two claims, both of which claim a device for providing signals to a joystick control port on a video game and require that an electrical contact on each thumb be connected to ground through the same resistor.

12. U.S. Patent No. 4, 613, 139 both of which claim a device for providing signals to a joystick control port on a video game.

13. U.S. Patent No. 4, 613, 139 is not infringed bt any act of Plaintiff Fakespace Labs, Inc. or its customers. The Fakespace Pinch Glove dies not connect the thumb contacts to ground through a resistor. The Fakespace Pinch Glove is not used for providing signals to a joystick control port.

INVALIDITY

14. On information and belief, and pursant to Title 35, United States Code. Section 282 (4) U.S. Patent No. 4, 613, 139 is invalid

pursuant to Title 35, United States Code, Sections 101, 102, 103, and 112.

15. On information and belief, and pursuant to Title 35, United States Code, Section 282 (4) U.S. Patent No. 4, 613, 139 and the claims thereof are in-valid or non-infringed on the following grounds :

(a) The prior art known before the alleged invention of the subject matter of said patent and the disclosure of the patent so limit and restrict the scope of the claims of said patent that nothing made, used or sold by Plaintiff can be regarded as an infringement;

(b) Defendants is estopped by virture of respesentation and concessions made to the United States Patent and Trademark Office during the prosecution of the application from which said patent issued from construing any of the claims of said patent to cover any of the activities of Plaintiff;

(c) Defendants imporoperly obtained the issuance of said patent by virture of representations made to the United States Patent and Trade Mark Office in the application and during the prosecution of the application from which the patent issued which gave erroneous impression to theUnited States Patent and Trademark Office of the alleged invention and of the advantages, value and success thereof;

(d) The United States Patent and Trademark Office improperly issued said patent without due consideration and without full investigation and consideration of all the pertinent prior art.

WHEREFORE, PLAINTIFF FAKESPACE LABS, INC. PRAYS:

A. For a Declaration and Judgment that Plaintiff Fakespace Labs, Inc. has not at any time infringed any claim of U.S. Patent 4, 613, 139, that the claims of U.S. Patent 4, 613, 139, are invalid and void are unenforceable, and that it is the right of Plaintiff, Fakespace Labs, Inc. and its customers to continue their businesses without any further actions, threat, or interference of any kind or nature by Defendants, Rosa

Robinson, William Frederick Robinson and William Frederick Robinson II from asserting, threatening or otherwise relying upon U.S. Patent No. 4, 613. 139 against Plaintiff or its customers;

C. For a Declaration of Rights with respect to the rights of Plaintiff Fakespace Labs, Inc. to continue in its business activities without interference or threat by Defendants Rosa Mary Robinson, William Frederick Robinson and William Frederick Robinson II.

D. That Plaintiff have judgment for its costs of this suit and for its reasonable attorney fees;

E. That this case be deemed exceptional pursuant to Title 35, United States Code, Section 285 and that Plaintiff Fakespace Labs, Inc. recover its actual attorney fees from Defendants Rosa Mary Robinson, William Frederick Robinson, and William Frederick Robinson II;

F. For such other and further refief as the Court may deem just and appropriate.

Date : December 9, 1999 "S/_____"

K. David Crockett, Esq.

Crockett & Crockett

Attorney for Plaintiff

Fakespace Labs, Inc.

DEMAND FOR TRAIL BY JURY

Please take notice that Plaintiff Tom Cunningham demands trail by jury in this action pursuant to Rule 38, Federal Rules of Civil Procedure.

Date : December 9, 1999 _____

K. David Crockett, Esq.

Crockett & Crckett

Attorney For Plaintiff

Fakespace Labs, Inc.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

Fakespace Labs, Inc., Plaintiff vs. Rosa Mary Robinson, an individual William Frederick Robinson, an individual William Henry Robinson, II an individual Rosa Mary Robinson, William Frederick Robinson William Henry Robinson II an unknown legal entity Defendants	Case No. : C99-05258 WHA Declaration of K. David Crockett In support of Plaintiffs Motion for Summary Judgment. Date : unassigned Time : 8:00 a.m. Place : Courtroom 9 450 Golden Gate Ave San Francisco, CA 94102

Declaration of K. David Crockett in Support of Plaintiff's Motion For Summary Judgment

I, K. David Crockett declare :

I am a member of the State Bar of California and a partner in the firm of Crockett & Crockett. I represent Fakespace Labs in the above entitled case

2. Attached as an Exhibit A. is a copy of my letter to Rosa Robinson Dated May 20, 1999, in this letter, I pointed out that the "Pinch "gloves do not incorporate resistors bewteen the thumb Electrodes and the connector". I also pointed out that her attorney told the patent office that " resistor 24 is critical to the invention" thus making it impossible to assert the claims against any computer gloves lacking resistors in the thumb leads.

3. I have had numerous telephone conversations with Mrs. Robinson since 1995, when she first sought to license the '139 patent to Fakespace. I have explained that the patent require a resistor not found in the Fakespace Pinch Glove, so that the license or purchase price for the patent would have to be very low. I have offered on behalf of Fakespace, up to twenty thousand dollars to buy the patent. However, the Robinson's have asserted that the patent is worth sevral million dollars.

4. In telephone conversations with Rosa Mary Robinson on or about April 6, 1999 and April 8, 1999 (preceding my May 20, 1999 letter) Mrs. Robinson presented me with many arguments why Fakespace Labs should produce gloves according to the Robinson patent. other arguments included analysis of the market size, estimates of revenues and profits made by Mattel on their Powerglove line, analysis of why the Powerglove was not comcercially successful, and how Fakespace Labs could produce a glove under the patent and make tremendous profits. I explained that Fakespace Labs did not have the manpower to explore such a product line. Mrs Robinson responded with her own estimates of the personell requirements to pursue the product.

I had many conversations with Mrs. Robinson during this time frame. Including telephone conversations on the following dates: April 6, 1995 (about an hour), April 8, 1999 (about 30 minutes), May 11, 1999 (about ten minutes) . During several of these conversations, I re-iterated Fakespace's interest in purchasing the Robinson Patent for a price in the range of $10.000 to $20.000.

Additionally in some of the phone conversations with Mrs. Robinson, she asserted that Mattel, which I know to be headquarted in El Sequndo, CA. had been forced into a license of the Robinson Patent This now appears to have been puffy.

I choose to file this case in the Northern District because all acts giving rise to the action occured in Mountian view, California. Also, given the current status of Fakespace Lab, and the new venture which the officer's are involved in, they can ill afford the burden of trail, much less the extended burden of litigation and trail in Detroit.

I declare under penalty of perjury under the laws of the State of California, that the foregoing is true and correct and that this declaration was executed on August 30, 2000 at Laguna Hills, CA.

Date : August 30, 2000

"S/ _____"

K. David Crockett, Esq.

Crockett & Crockett

Attorney for Plaintiff

Fakespace Labs, Inc.

APP. 76

DECLARATION OF IAN MCDOWALL IN SUPPORT OF DEFENDANT"S MOTION FOR SUMMARY JUDGMENT

I, Ian McDowall, declare :

1. I am the vice president of Defendant Falespace Labs, Inc., I am at least 18 years of age, and if called upon I will testify to the facts declared herein.

2. Attached hereto as Exhibit C is a true and correct of a schematic diagram of the Fakespace Pinch Gloves, the accused decice in the ligitation.

3. Fakespace has sold the Pinch glove in only one model, varying only in glove size, and this has not varied from the schematic of Exhibit C since Fakespace labs begin selling the glove.

4. I am one of the designers of the Fakespace Pinch Gloves, and I am responsible for maintaining records which accurately reflect the design of the glove. All Pinch gloves have been manufactured according to the Schematic of Exhibit C.

5. The Pinch gloves do not contain any resistors. The Pinch gloves do not connect both thumb leads to a single common terminal, and certainly do not have a resistor in series between a single common terminal and the two thumb elevtrodes. This applies to all Pinch gloves ever manufactured by Fakespace Labs.

I declare under penalty of perjury under the laws of the State of California, that the foregoing is true and correct and this declaration was executed on October 27, 2000 at Mountain View California.

Date : October 27, 2000 "S/_____"

Ian E. McDowell

Vice President, Fakespace

Fakespace Labs, Inc.

APP. 77

CROCKETT & FISH

Patent & Trademark Law

22362 Rosebrair, Mission Vieja, CA 93692

(949) 588-5171 Fax (949) 588-6172

January 11, 2000

Rosa Robinson

8631 Griggs

Detroit, MI 48204

William Henry Robinson

8631 Griggs

Detroit, Michigan

William Frederick Robinson, II

8631 Griggs

Detroit., MI 48204

Case: Fakespace Labs, Inc. V. Robinson et al C99-05258 WHA

Subj: Rule 66 offer

To the Defendants:

Pursuant to Fed. R. Civ. Proc. 68, we hereby offer to settle this case for infringement under the following terms,

(1) Your stipulation of non-infringement and (2) your agreement that no money damages are due.

According to Rule 68, if you do not accept this offer within ten days, and if the judgment you eventually obtain is not greater than this offered of zero dollars, you will have to pay all the costa incurred by Fakspace after this offer is made. Sincerely,

"S/_____"

K. David Crockett

Fig. 5 illustrates the circuity in the interface electronics box. The power supply for the unit is shown as block 601, which is composed of a bridge diode and voltage regulator to provide a clean-volt power for the system. Block 603 is the interface from the proccessor to the host computer and implements the Rs 232 level shifting. Block 604 is the microcontroller which contains the firmware for communicating the state of the gloves back through RS232 interface 603 to the host computer. Block 605 is a set of DIP switches which are used to control specific features such as BAUD rate and minimun time between contacts. The controller, 604, controls the condition indicators 606 and 607.

The interface between 604 and the gloves is implemented by the RESISTORS 610 and connectors 608 and 609. The diodes, 611 and similar, provide the static protection which is neccessary as there are exposed contacts on the glove.

2. Self Calibration

The touch senseing capability of the data gloves described above may be combined with a flex-sensing glove to create an auto-cabrating glove.

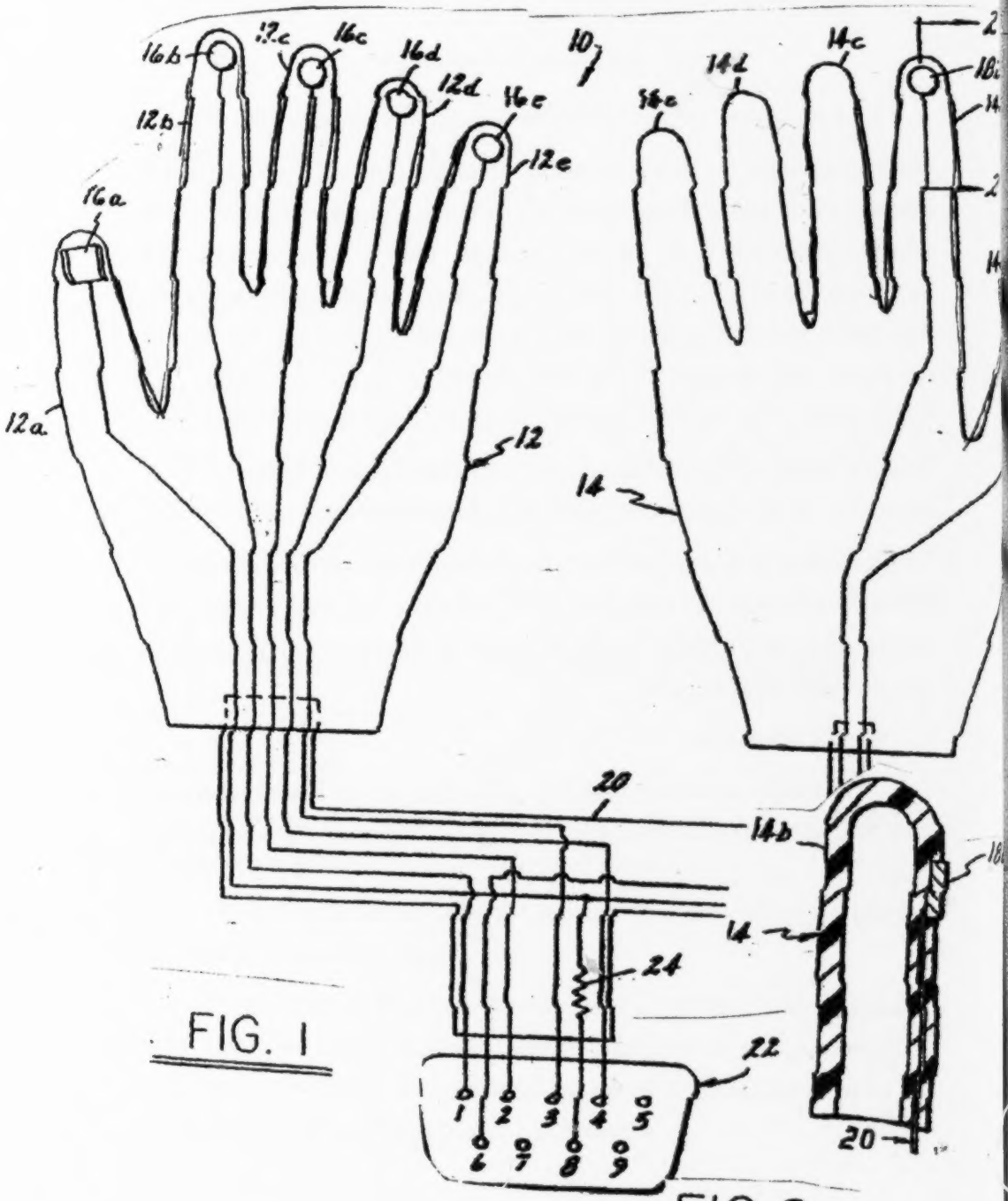

16b
17c
16c
16d
12d
16e
12b
12e
16a
12a
12
10
14d
14c
14e
14
20
14b
24
22
1
2
3
4
5
6
7
8
9

FIG. 1

FIG. 2

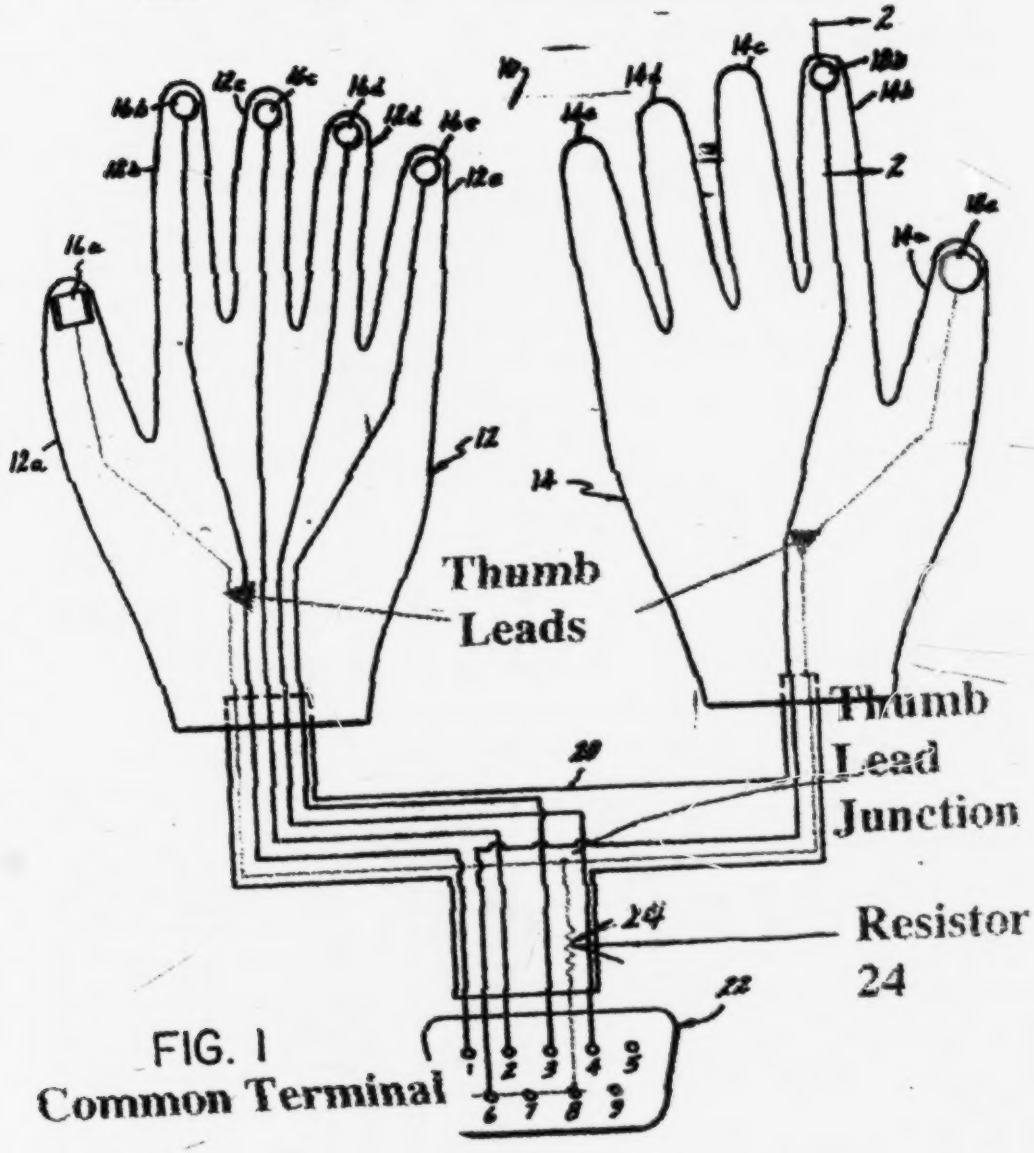

Thumb
Leads
Thumb
Lead
Junction
Resistor
24
Common Terminal

FIG. 1

FIG. 5-C

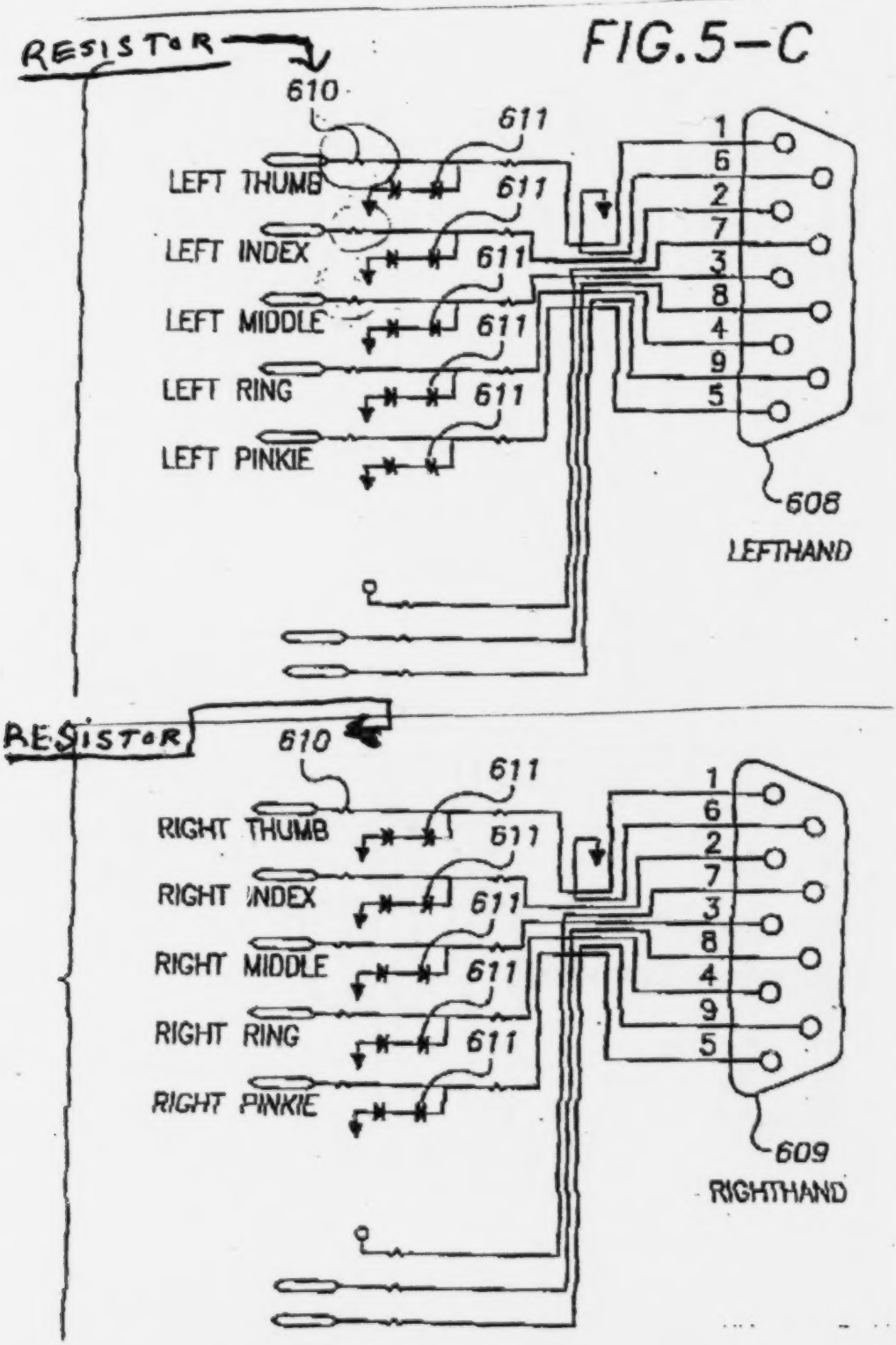

RESISTOR
610
611
LEFT THUMB
LEFT INDEX
LEFT MIDDLE
LEFT RING
LEFT PINKIE
1
6
2
7
3
8
4
9
5
608
LEFTHAND
RESISTOR
610
611
RIGHT THUMB
RIGHT INDEX
RIGHT MIDDLE
RIGHT RING
RIGHT PINKIE
609
RIGHTHAND

FIG. 2

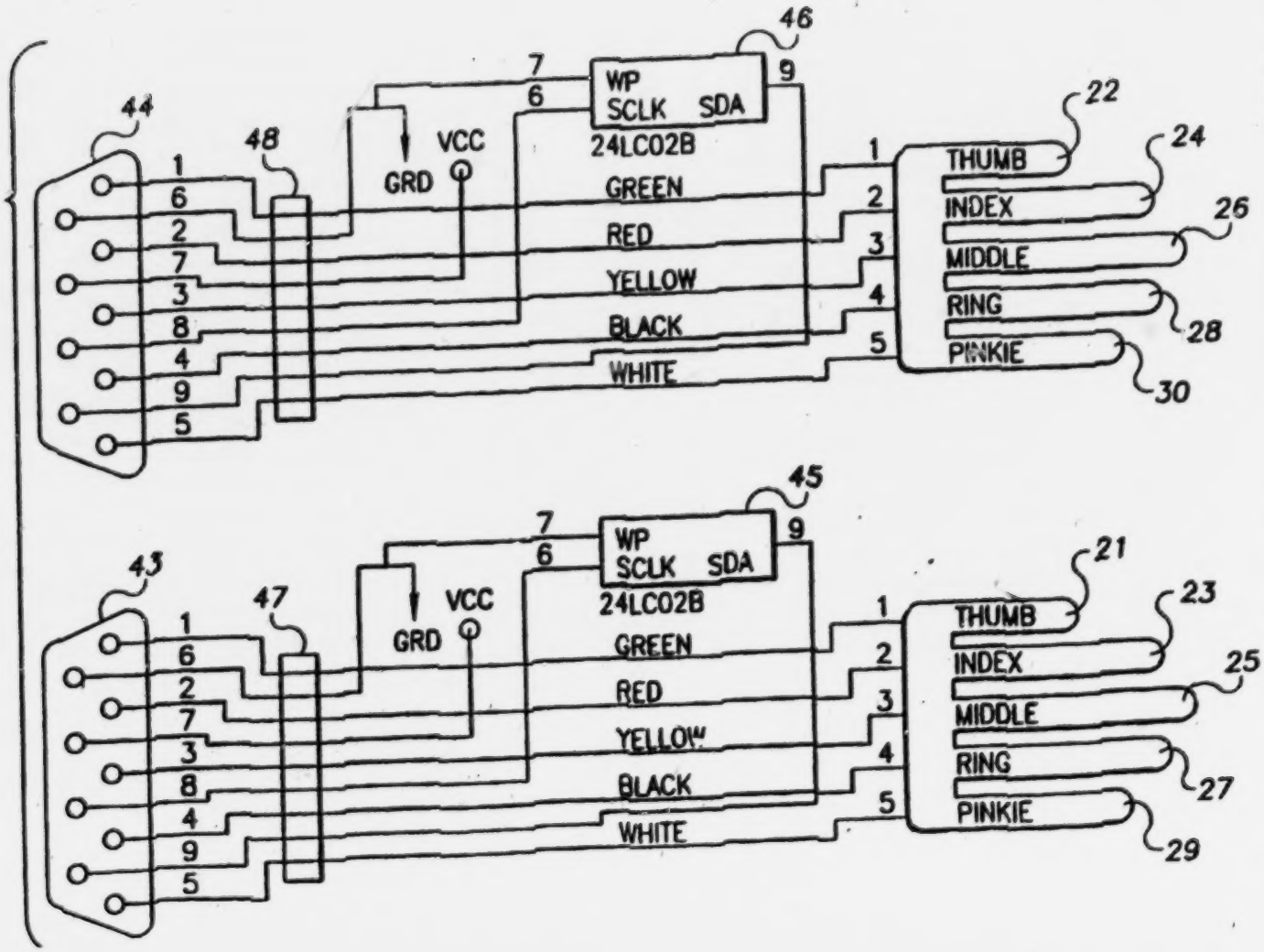
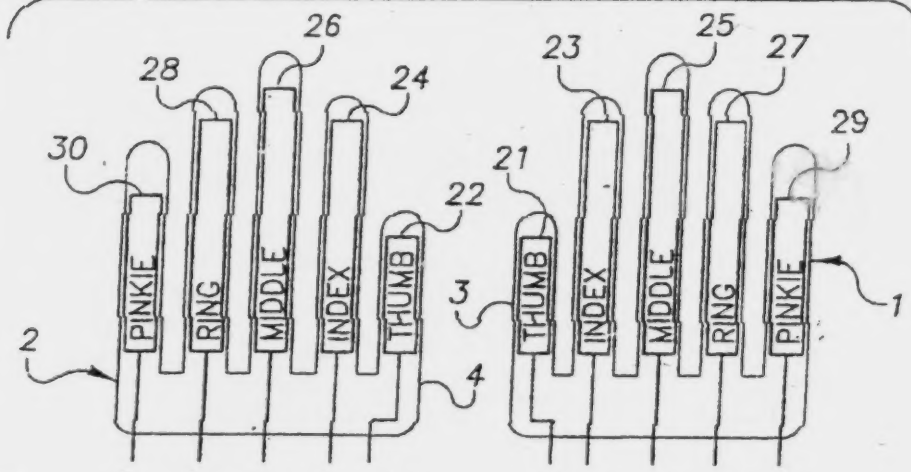
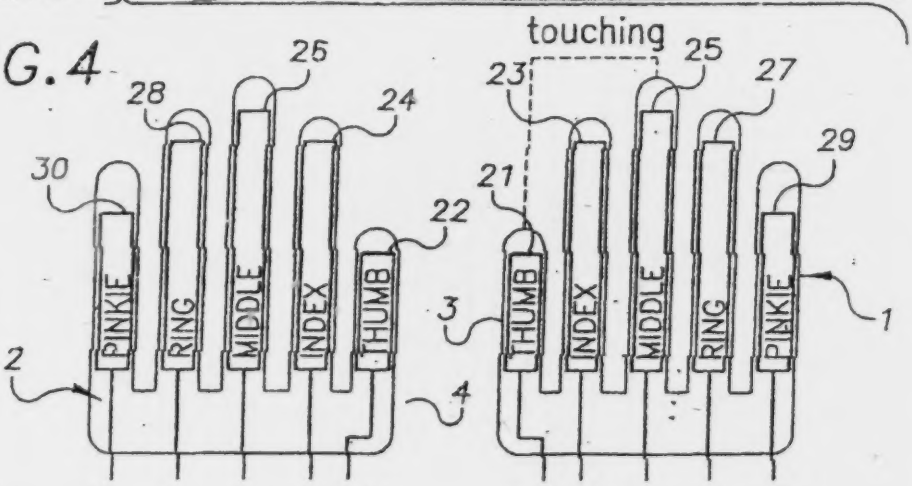

46
44
48
7
6
9
WP
SCLK SDA
24LC02B
VCC
GRD
GREEN
RED
YELLOW
BLACK
WHITE
1
2
3
4
5
22
24
26
28
30
THUMB
INDEX
MIDDLE
RING
PINKIE
45
43
47
21
23
25
27
29

FIG. 3

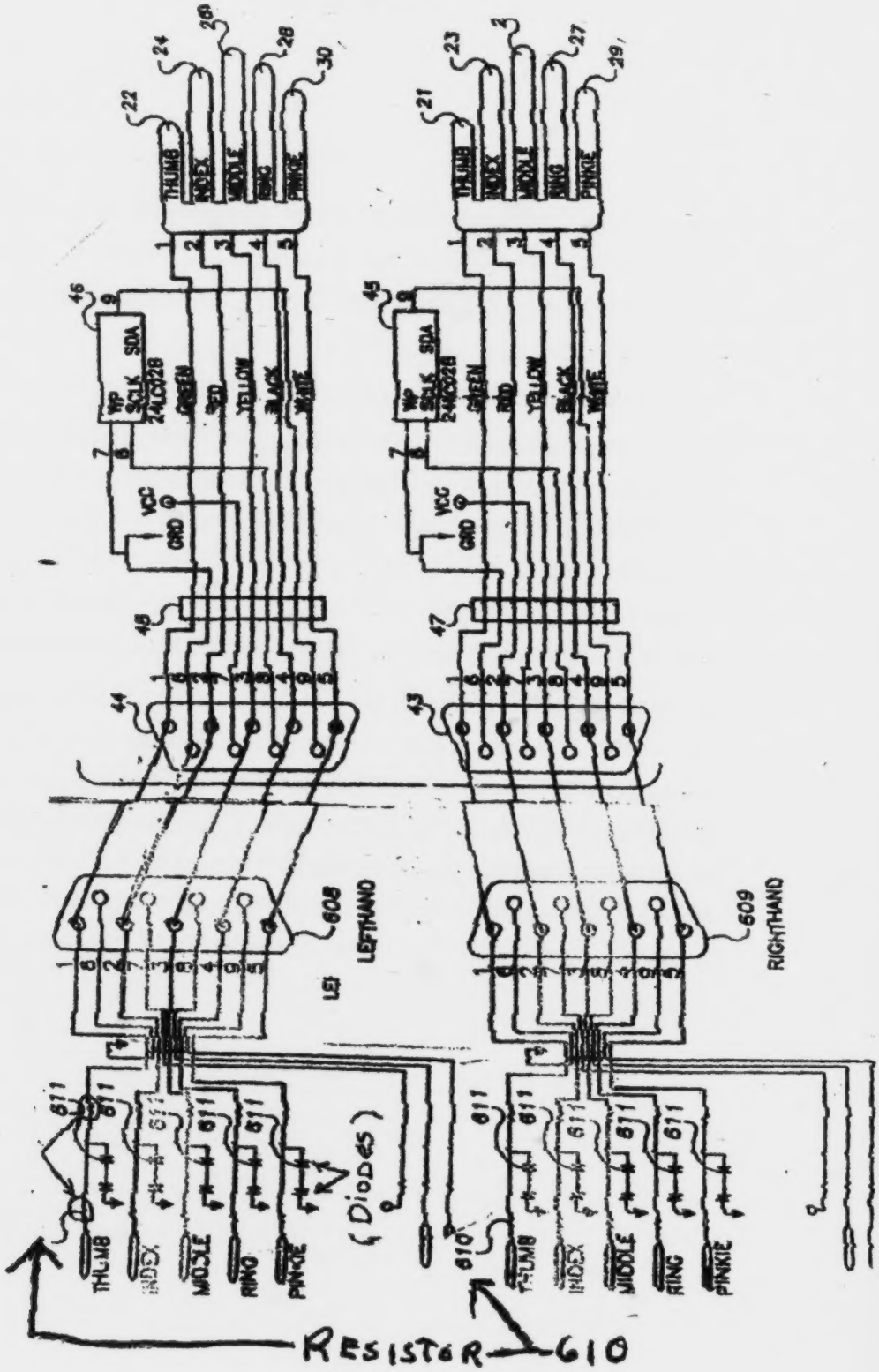


T1	0v	0v	0v	0v	0v	V_1	0v	0v	0v	0v
T2	0v	0v	0v	0v	0v	01	V1	0v	0v	0v
T3	0v	0v	0v	0v	0v	0v	0v	V_1	0v	0v
T10	0v	0v	0v	0v	V_1	0v	0v	0v	0v	0v

FIG. 4



T1	0v	0v	0v	0v	0v	V_1	0v	V_{out}	0v	0v
T2	0v	0v	0v	0v	0v	01	V1	0v	0v	0v
T3	0v	0v	0v	0v	0v	V_{out}	0v	V_1	0v	0v
T10	0v	0v	0v	0v	V_1	0v	0v	0v	0v	0v


THUMB
INDEX
MIDDLE
RING
PINKIE
WP
SCLK
SDA
24LC02B
VCC
GRD
GREEN
RED
YELLOW
BLACK
WHITE
608
LEFTHAND
609
RIGHTHAND
611
(DIODES)
610
RESISTOR

between those two pairs of digits. If one were to touch all four of those digits at once, you would get back a single pair of bited with ones marked in the appropriate locations to reflect the fact that those touches were occurring.

In addition to contact information, time is also important. For example, most computer users are accustomed to the "double clicking" functions of the mouse. The data gloves described above, may also be double clicked. In order to accomplish this in the smoothest fashion, the glove also reports the amount of time elasped between the current gesture and the previous gesture transition. A gesture transition occurs either when a gesture is made or a gesture is released. For example, **the operator accomplished a gesture by touching the index finger to the thumb.** When the operator releases the two fingers, this also constitutes a gesture, and the time elasped between making the gesture and releasing it is tracked and recorded by the **microcontroller in the glove or by the electronics in the control box.**

1

VIDEO CONTROL GLOVES

FIG. 2 is a fragmentary sectional view taken substantially along the line 2-2 in FIG. 1.

The drawings schematically illustrate a presently preferred embodiment 10 of controll apparatus in accordance with the invention as compraising a pair gloves **12-14**, each having a separate thumb and finger portions **12a-12e** and **14a-14e** adopted to be removably received onto the hands of the user or player. Contacts **16a-16e** and **18a-18b** of suitable electrically conductive material are respectively separately affixed to thumb and finger portions **12a-12e** and **14a-14b** on the inside of palm surface adjacent to the tips thereof.. The surfaces of contacts **16a-16b are exposed, such that physical contact between the finger and thumb tips obtains or results in connection between the associated contacts.**

Thumb and finger contacts 16a-16e and **18a-18b are connected by cable 20 to an electrical connector 22.** In the drawings, connector **22 comprises a female type DB9 nine pin joystick connector which is suitable for connection to a control port of a video game or computer which adheres to or follows the so-called ATARI joystick convention.**

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF MICHIGAN

SOUTHERN DIVISION

ROSA MARY ROBINSON, an individual,
WILLIAM FREDERICK ROBINSON,
an individual, WILLIAM HENRY
ROBINSON II, an individual

Plaintiffs

Vs.

FAKESPACE LABS, INC.

Defendant

And

FAKESPACE LABS, INC.

Defendant and Counterclaiment

Vs.

ROSA MARY ROBINSON, an Individual;
WILLIAM FREDERICK ROBINSON., an individual
WILLIAM HENRY ROBINSON, II, an Individual, and
ROSA MARY ROBINSON, WILLIAM FREDERICK ROBINSON,
WILLIAM HENRY ROBINSON II, an unknown legal entity,

Counter-Defendants

Case No. 00-70272

Hon. Nancy G. Edmunds

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEFENDANT'S MOTION FOR SUMMARY JUDGMENT OF NON-INFRINGEMENT

MEMOMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEFENDANTS MOTION FOR SUMMARY JUDGMENT OF NON-INFRINGEMENT

1. CONCISE STATEMENT OF THE ISSUES PRESENTED

1. Whether the Fakespace Pinch Glove literally infringes the claims of U.S. Patent 4,613 139

Defendant answer is No.

2. Whether the Fakespace Pinch Glove infringes the claims of U.S. Patent 4, 613, 139 under the doctrine of equivalents.

Defendant answer is no.

Defendant Fakespace Labs, Inc. seeks summary judgment of non-infringement on the basis that the accused product does not incorporate limitations that are critical to the invention. The Pkaintiff agrees that the critical limitations are missing from the accused device. Early summary judgment ts therefore warrented.

11. CONTROLLING LEGAL AUTHORITY

1. Southwall Technologies, Inc. v. Cardinal IG, Co. 54 F 3d. 1570, 1575 (Fed.Cir. 1995)(requirements for setermining literal infringement);

2. Walpeton Canvas Co v. Frontier, Inc. Inc., 87000 F.2d. 1546, 1553 (Fed. Cir. 1989)(dependant claims are not infringed unless parent claims are infringed);

3. Warner-Jenkinson Co. V. Hilton Davis Chem. Co., 529 U.S. 17, 40 (1997)(doctrine of equivalents must be met on an element by element basis);

4. Litton Systrms, Inc. v. Honeywell, Inc., 140 F.2d. 1449, 1555 (Fed. Cir. 1998)(doctrine of equivalents is limited by prosecution history; and

5. Victroics Corp. v. Conceptronic. Inc., 90 F3d 1576, 1583

(Fed. Cir. 1996)(consideration of Extrinsic is improper absent some ambiguity in the claims).

111. STATEMENT OF RELEVANT FACTS

1. The claims of U.S. patent 4,613,139 require a single resistor in series between both thumb contacts on a pair of video control gloves and the connector used to connect the gloves to the computer.

2. The claims of U.S. Patent 4, 613, 139 require a shared connection between both thumb electrodes and single connector used to connect the gloves to a computer.

3. The Fakespace Pinch Glove does not have any resistors between the thumb contacts and the connector

4. The Fakespace Pinch Glove has two separate connectors, one for each glove, and the thumb electrodes have separate connections between the thumb electroded and the separate connectors.

5. The Plaintifffs have acknowledged that the Fakespace Pinch Glove does not have any resistors between the thumb contacts and the connector.

6. The resistor recited in the patent claims is critical to the invention, according to the Patentee

1V. INTRODUCTION

This case is an action for infringement of U.S. Patent 4,613, 139 (hereinafter "the '139 patent"), issued to William Henry Robinson. The patent is for gloves having contacts attached at the fingertips and a resistor in line with the thumb contacts. The patented glove is to be used for playing video games. The patent claims require a resistor in the lead connecting the thumb contact to a connector, and also require that both thumb contacts share the same lead. According to Robinson, "the resistor is critical to the invention."

Defendant's product, which has been accused of infringing the '139 patent, is sold under the trademark Pinch. There is only one model of Pinch glove. The Fakespace Pinch glove does not have a resistor in any place, and the thumb contacts are each provided with separate leads. Accordinly, Fakespace is entitled to summary judgment of non-infringement. By this motion, Plaintiff seeks a summary judgment that the Pinch Gloves do not literally infringe upon the '139 patent and do not infringe upon the '139 patent under the doctrine of equivalents.

V. SUMMARY ADJUDICATION ON THE ISSUE OF NON-INFRINGEMENT IS APPROPRIATE AND MUST BE GRANTED IN THIS CASE.

Fed.R. Civ. P. Rule 56 (c) authorizies the Court to enter summary judgment where "there is no genuine issue as to any material fact and ... the moving party is entitled to a judgment as a matter of law." In recent years, the United States Supreme Court has shown that it strongly favors summary judgment as an efficent means for resolving issues. Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986); Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986). Summary judgment is as appropriate in a patent case as in any other. Barmag Barmer Massschinenfabrik AG v. Murata Machinery, Ltd., 731F2d 831, 835 (Fed. Cir. 1984)

Instead the Federal Circuit encourages the proper use of Rule 56, having stated that, '(w)here no issue of material fact is present . . . courts should not hesitate to avoid an unessary trail by proceeding under Fed. R. Civ. p. 56 ..." Chrore- Time Equipment, Inc. v. Cumberland Cotporation., 713 F.2d 774, 778-79 Fed. Cir. 1983). As explained below, Defendants non-infringement is very clear and easy to understand, and cannot be controverted. Summary judgment is required to avoid useless ligitation.

A. **Defendant's Pinch Gloves Do not literally infringe The '139 Patent**

In order to prove infringement, Plaintiff must peove that all of the limitations of the independent claim of the '139 patent are included in the Defendant's gloves, because if any one limitation of a claim is missing, then there is no literal infringement. Southwall Technologies, Inc. v. Cardinal IG Co., 54 F3d 1570, 1575, (Fed. Cir. 1995)

In the '139 patent, claim 1 is the only independent claim. Crockett Dec. Ex. 1. page 3-4. If any the limitations of this claim are missing from the Defendant's gloves, then there can be no infringement. The '139 patent also includes one dependant claim, claim 2. Claim 2 cannot be found to infringe unless claim 1 is found to infringe.

Claim 1 states:

1. Apparatus for providing switch closure control signal inputs to a joystick control port being of predetermined configuration in which signal inputs consist off electrical closure between a common terminal at said port and one or more signal terminals, and appartus comptising:

a first glove having a thumb portion and four finger portions separate from each other and from said thumb portion.

a second glove having a thumb portion and at least one separate finger portion,

electrical contact means affixed to each said thumb and finger portions of said first glove adjacent to the tips thereof and to said thumb portion and said one finger portion of said second glove adjacent to the tips thereof, such that physical contact between a thumb portion of one of said gloves and one or more of said finger portions of the corresponding glove obtains electrical connection between the corresponding contacts on said portions,

a connector constructed for removeable mating engagement with a control port, said connector having common and signal terminals for individual engagement with common and signal terminals of a control port.

first connection means individually electrically connecting said contacts on said finger portions of said first gloves to signal terminals of said connector,

second connection means electrically connecting said contact on said thumb portion of said first glove to said common terminal at said connector, said second connection means including resis tance means connected in series between said connector com- mon terminal and said contact on said thumb portion.

third connection means electrically connecting said contact means on said finger portion of said second glove to a signal terminal on said connector and

fourth connection means electrically connecting said contact on said thumb portion offf said second glove to said resistance means such that said resistance means is connected in series between said connector common terminal and the contacts on the

thumb portions of both said gloves.

(Ex. A, Page 3-4. The claim is fairly easy to understand. It requires all the following:

1. two gloves connected to a single resistor;
2. contacts on all the fingers and both thumbs
3. wires connecting the finger contacts to the connector (first connection means and third connection means);
4. wires connecting the thumbs to the connector common terminal (second connection means and fourth connector means);
5. a single resistor (the resistance means)
6. the resistor must be in direct line between both thumb contacts and the connector common terminal.

The claimed device is exactly what is shown in Figure 1 of the patent, reproduced below;

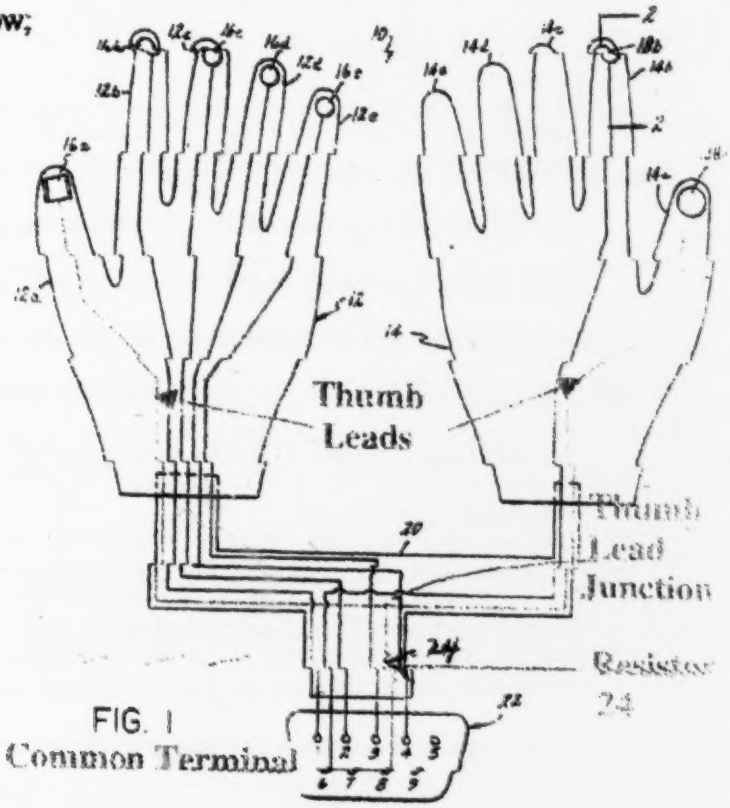
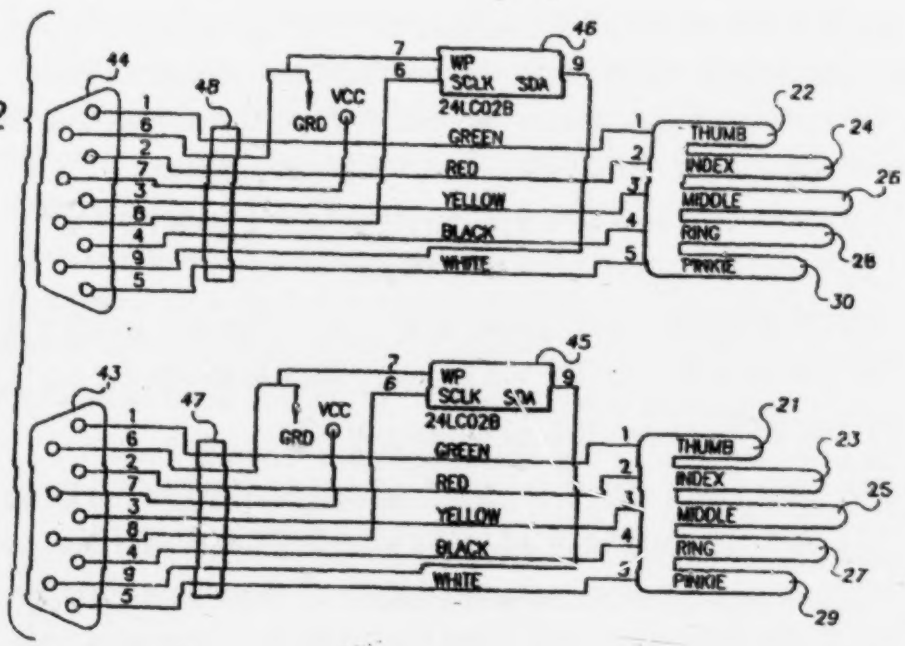


FIG. 1

As seen in Figure1, the resistor 24 is in series between both thumb contacts 18a and 16a and the common terminal 8 of the connector 22. This is precisely what is claimed. The claims require that the thumb be connected to the common terminal on the connector, and that a resistor be placed between the thumb and the connector common terminal. Figure 1 of the '139 patent shows thumb electrodes 18a and 18a connected by wire to resistor 24 and then to the common terminal 8, as required by the claims. The claims also require that both thumbs be connected to the same resistor (said resistance means is connected in series between said connector common terminal and the contacts on the thumb portions of both said gloves). This is also illustrated in Figure 1. Claim 1 requires that Defendant's gloves have a single resistance means connecting the contacts of the thumb of each of the gloves to the same connector.

Defendant's gloves are illustrated in the following schematic;

FIG. 2



This Schematic accurately reflects the electrical wiring of the Pinch Glove. (McDowall Dec. 12 and Ex. C) It has been submitted to the United States Patent Office in Fakespace's own patent application, and has been published in an issued United States Patent belonging to Fakespace. (Crockett Dec. 14). As shown in the illustration, Defendant's gloves do not include a resistance means connecting the two thumb contacts 21 and 22 to their rspective connectors, and they certainly are not connected to the same connector. (See also McDowall Dec. 15). In fact Defendant's gloves do not include a resistance means at all. (Id.) As a result, Defendant's Pinch gloves do not literally infringe the '139 patent. Additionally, the Pinch gloves do not connect both thumbs to a single common terminal, and certainly do not have a resistor in series between a single common terminal and the thumb electrodes. (Id.)

Plaintiff's own sworn testimony confirms the absence of the requuired resistor. Both William Henry Robinson and William Frederick Robinsonn have stated that (1) they had inspected a Fakespace Pinch glove prior to filing their complaint and (2) they found no resistor in the Fakespace glove. The testimony was direct and unequivocal.

MR. CROCKETT : HAVE YOU EVER INSPECTED A PINCH GLOVE? WILLIAM HENRY ROBINSON : YES

MR CROCKETT : AND HAVE YOU EVER FOUND A RESISTOR IN THE PINCH GLOVE : WILLIAM HENRY ROBINSON : NO

(Ex. E, William Henry Robinson II Dep. at 14.)

MR CROCKETT : DO YOU HAVE A FAKESPACE GLOVE IN YOUR POSSESSION : WILLIAM FREDERICK ROBINSON :

YES MY WIFE DOES , MR. CROCKETT : AND HOW DID YOU GET THAT GLOVE? WILLIAM FREDERICK ROBINSON : MY

WIFE ORDERED IT THROUGH HER SISTER:

MR. CROCKETT: HAVE YOU INSPECTED THE GLOVE?

WILLIAM FREDERICK ROBINSON : YES I HAVE LOOKED AT IT. MR. CROCKETT : AND DID YOU FIND A RESISTOR ON THE GLOVE ANY PLACE ?

WILLIAM FREDERICK ROBINSON : NO I DIDN'T.

MR. CROCKETT : DO YOU KNOW WHAT A RESISTOR IS ?

WILLIAM FREDERICK ROBINSON : YES.

(Ex. F, William Frederick Robinson Dep. at 6-7

As the testimony of the Plaintiffs indicates, they agree that there is no resistor in the Pinch Glove. There is no dispute as to this dispositive fact.

Thus, Defendant's Pinch Gloves are missing several limitations of the claims, and do not infringe for two distinct reasons. First, the claimed resistor does not appear in the accused device. Second, as a logical result, of the missing resistor, the accused device does not have a resistor in a common lead connecting the thumb leads of each glove to a single connector. Third, the thumb leads are not connected to a single common terminal. The Robinson's cannot prevail on a claim of literal infringement given the fact that the Pinch Glove does not include these limitations. Accordinly, Fakespace is entitled to summary judgment that the Pinch gloves do not literally infringe the claims of the patent.

Claim 2 of the 139 patent is dependant on claim 1. Therefore, it cannot be infringed. It is axiomatic that a dependent claim inherits all the limitations of the base claim, and cannot be infringed unless the base claim is also infringed. See Walpeton Canvas Co. v. Frontier. Inc., 870

B. Defendant's Gloves Do Not Infringe the 139 Patent Under the Doctrine of Equivalents

Once it is determined that a product does not literally infringe a patent, it must then be determined whether the product infringes under the doctrine of equivalents, if the patentee wishes to assert it. To infringe under the doctrine of equivalents, the accused product must contain each claim element or its equivalent. See warner-Jenkinson Co v. Hilton Davis Chem. Co., 520 U.S. 17, 40 (1997). An element in the accused product is equivalent to a claimed element if the differences between the two are " insubstantial " to one of ordinary skill in the art. Id. at 40'

The most important point of Warner Jenkinson is that " the doctrine of equivalents must be applied to individual elements of the claim, not to the invention as a whole." Id. Therefore, when applying the doctrine of equivalents, this court must look for individual elements within the accused device which are equivalent to the literally missing elements recited in the claims. Patent infringement can only occur when the accused device contains either an identical or an equivalent element for which each individual element recited in the claim.

As discussed above, the missing elements of claim 1 are (1) the resistance means (2) the limitations that requires a single resistance means be placed with both thumbs.

The classic test used to determine " instubstantiality " is whether the elements performs substantially the same function in substantially the same way to obtain substantially the same result as the claim limitation. See Graver Tank & Mfg. Co . v. Linde Air Prods. Co. 339 U.S. 605, 608 (1950). However, where there is no potential equivalent element in the accused device, issues of equivalence are moot.

and (3) the limitation that requires the thumb leads be connected to a single common terminal. It is clear that Defendant's Gloves do not contain a resistance means. The question now becomes whether or not defendant's gloves containn an element that is equivalent to the resistance means. The answer is no. Each of the thumb contacts of Defendant's dloves are directly connected to their own separate connectors through a wire, and no resistor is used. Further , the two thumb connectors are not connected to the same terminal of the connector through a common resistor. Each of Defendant's gloves has its own separate connector. (McDowall Dec. 15.) As a result there is no structure equivalent to the resistor. There is no structure whatsoever which could be considered equivalent to a resistor. Also, there is no structure which could be considered to connect the thumb electrodes to a single common terminal, since the thumb terminals of the Pinch gloves are each connected to a separate connector. None of the three missing limitations may be linked to any structure on the Pinch gloves which could possibly be considered equivalent.

C. Patentee Is Estopped From Arguing That The Resistance Means Is Not A Critical Limitation Because Of The Doctrine of Prosecution History Estoppel

According to Robinson, " resistor 24 is critical to the invention." (Crockett Dec., Ex. B page 27). This statement completely eviscerates any potential arguments for equivalence under the doctrine of equivalents. The prosecution history estoppel in this case, on the point of the resistor, could not be more blantly clear,

In this case, there were two office actions by the Examiner and two office action responses by Robinson. The first office action dated June 10, 1985, was in response to the application filed. (Crockett Dec., Ex. B. p. 18). All the claims 1 through 12 were rejected under 35 U.S.C. s 103 as being obvious in light of the prior art. Id. at 19-20

In response to the obviousness rejection, Robinson filed an office action dated September 10, 1985. (Crockett Dec., Ex. B. page 23) In that response the Patentee cancelled all the original claims and added claims 13 through 15. (Id.)

Thus, Robinson replaced his first set of claims with a second set of claims in order to " more clearly distinguish the subject matter of the present invention over the cited references. " (Id. at p. 26). The new claims added limitations requiring that the thumbs both be connected to the common terminal through the same resistor. Patentee explains that claim 14 (now claim 1, after being combined with claim 13 and renumbered as (16) is distinct from the cited references in the following passage.

> Even if it were obvious to provide a pair of gloves an either Schindler or Miller, such modifications to the references would lack that feature of claim 14 whereby the thumb contacts are connected through a common resistor to the common terminal of the apparatus connector. (Id. at 28)

Clearly, the connection of the thumb contacts through a common resistor was argued as the distinction between the claims and the *prior art. Robinson's is clearly estopped, by virture of this statement* to the Patent Office, from arguing that the thumb contacts need not be connected through a common resistor in order to infringe the patent.

Further, in the " Remarks " portion of the office action response, Robinson discussed the additionas of the resistance means to the claims and why that addition was important.

Robinson made the following argument :

> Appellant has found that resistor 24 is critical to the invention not only from the standpoint of providing current limitation for safety purposes, but also to render a a single set of control gloves usable in con-

> junction with a wide variety of video consoles. Chandler does not disclose such a resistor, or equivalent, between the arcute switch closure contacts and connector 152. Nor does either Schindler or Miller disclose such a structure. It neccessarily follows that the subject matter of new claims 13 is not disclosed or rendered obvious by the proposed combination of Chandler with Schindler or Miller

(Id. at pg. 27 (emphasis added)

The estoppel effect of such a statement is clear The resistor is critical to the invention, in Robinson's own words. There can be no argument now that the resistor is not critical to infringement. An amendment to the claims done to avoid prio art prevents the Patentee from recapturing the subject matter surrendered to obtain the patent. Litton Systems Inc. v. Honeywell, Inc., 140 F. 2d. 1449, 1455 (Fed. Cir. 1998)

Clearly, Robinson is estopped from asserting its claims against a device in which there is no resistoe connecting both thumb contacts through a single resistor to the connector. The statements establishing the estoppel are very clear and unequivocal. The Defendant's Pinch gloves do not have a resistance means, nor do Defendant's gloves connect both thumb contacts through a single resistance means to the connector. (McDowall Dec. Ex. C). As a result, Defendant's gloves do not infringe the '139 under the doctrine of equivalents.

VI. EXTRINSIC EVIDENCE AND FURTHER DISCOVERY ARE UNNESSARY

The Defendant urges this court to hear this summary judgment motion prior to further discovery in this case. The parties are agreed that (1) the claims require a resistor and (2) the accused divice has no resistor. Discovery cannot change this, The meaning of the claims and the structure of the accused device are indisputable. Any extrinsic

evidence arising from further discovery cannot alter the meaning of the claim language, which clearly requires a resistor, and requires the resistor to be placed in a certain place on the gloves circuit. Further, discovery cannot make a resistor appear in the accused device where none exists.

While the Defendant is sensitive to the need to provide due process to the prose Plaintiff's, providing undue process is wasteful and expensive and unfair to the Defendants. Further discovery would be undue process. The Federal Circuit has made strong cautionary statements on the proper use of extrinsic evidence, see Vitronics Corp. v. Conneptronic, Inc. 90 F. 3d. 15576 (Fed. Cir. 1996). When disputed terms can be understood from a careful reading of the public record, reliance on extrinsic evidence is improper. Vitronics, 90 F. 3d ad 1584. " If the meaning of the patent record is plain, the public record is conclusive. Key Pharmaceuticals v. Hercon Labatories Corp., 161 F. 3d. 709, 716- (Fed. Cir. 1998). This court " should only consider extrinsic evidence ' if there were still some genuine ambiguity innn the claims, after consideration of all available instrinsic evidence." Vitronics 90 F3d. at 1584.

The rule against use of extrinsic evidence is eaisly applied to this case, The parties are agreed that there is no resistor in the accused device. The claims clearly call for a resistor in the glove (along with narrow limitations on where the resistor may be placed). There is no ambiguity in the claims, and they can eaisly be understood without resort to extrinsic evidence. Hence, further discovery would be wasteful, since the outcome of this motion cannot be altered.

V11. CONCLUSION

For all the foregoing reasons, this court must find that Defendant's gloves do not infringe the '139 patent either literally or under the doctrine of equivalents.

Respectfully submitted

ARTZ & ARTZ P.C.

By : "S/_____,

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Attorneys for Defendant
Fakespace Labs.

d : November 21, 2000

APP. 103

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF MICHIGAN

SOUTHERN DIVISION

WILLIAM FREDERICK ROBINSON, PRO PER

ROSA MARY ROBINSON, PRO PER & **Case No. 00-70272**

WILLIAM HENRY ROBINSON II. Proper **Hon. Nancy G. Edmunds**

Plaintiffs

Vs

FAKESPACE LABS. INC,

Defendant

January 30, 2001

Request to Defendants To Provide Discovery Within 25 days

Now comes Plaintiffs, William Henry Robinson II, in Pro Per, Rosa M. Robinson in Pro Per, and William Henry Robinson in Pro Per " Request " for procuction of documents from defendants within 25, days as follows:

(a) all documents describing circuit diagrams of the Pinch Gloves

(b) all documents, sketches, and configurations that describe the circuit diagram for the host computer that the Pinch glove plugs into.

(c) the Micro Processor

(d) net Gross sales of the Pinch Gloves

(e) the number of units sold of the Pinc Gloves

(f) list of customers and businesses that purchased the Pinch Gloves

(g) names, phone numbers, and address of all customers that purchased the Pinch Gloves

"S/_____"

APP. 104

ARTZ & ARTZ PC

Attorneys & Counselors

Intellectual Property and Technology

Related cases

February 16, 2001

Honorable Judge Nancy Edmunds

U.S. District Court, Eastern District Of Michigan

Southern Division, 231 W. Lafayette

Detroit, MI 48226

Re: Robinson, et al vs. Fakespace Labs, Inc.

Civil Action No.: 00-70272

Our File No : CRO 0101 L

Dear Judge Edmunds :

This letter is intended to memorialize, and confirm your direction at the most recent Status Conference between the parties and is being written after consultation with your clerk.

Plaintiffs have served its first set of discovery requests upon our client, Fakespace. Responses to such requests will be due before the Summary Judgment currently pending before Magistrate Judge Carlson. In view of the legal issues involved, the Court had indicated that all discovery would be stayed until after the resolution of Fakespace's Motion for Summary Judgment. Thus, in accordance with the Court's directive, it is our understanding that Fakespace does not have to respond to Robinson's discovery requests at this time.

If the Court should have any questions, please contact the undersigned.

cc: Rosa Mary Robinson, William Frederick Robinson
William Henry Robinson
David Crockett

Very Truly Yours,

"S/_____"

John S. Artz

APP. 105

UNITED STATES DEPARTMENT OF COMMERCE

PATENT AND TRADEMARK OFFICE

OFFICE OF THE SOLICITOR

February 9, 2001

Re : **Subpoena of Documents Relatint to U.S. Patent No. 6,128,004**

Rosa M. Robinson

8631 Griggs

Detroit-Michigan 48204

Dear Ms. Robinson :

The Office of the Solicitor received you subpoena requesting production of documents related to the U.S. Patent No. 6, 128, 004 ('004 patent) by the United states Patent and Trademark Office (USPTO) . As I told you on the telephone, to obtain a certified copy of the prosecution file of the '004 patent, you must send a request to the Certfication Branch of the USPTO along with the appropriate fee. The certified copy of the '004 patent's prosecution file will include the original application, all correspondence to an from the USPTO about the application, and a copy of the '004 patent.

I am returning your subpoena with this letter. Please send me a letter or other document indicating that you have withdrawn your subpoena. Please let me know if I can be of any further assistance to you in this matter.

Very Truly Yours,

"S/_____"

Kristin L. Yohanaretan

Enclosures

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REFERENCE ORDER NUMBER	0
BIN NUMBER	0

Page 1 of 1

DELIVERY INSTRUCTIONS

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May 22, 2001

Ms. Crystal

U.S. Patent and Tradwmark Office

Certificate Branch

Washingtom D.C. 22202

Dear Crystal,

This letter is a follow-up to the telephone conversation I, Rosa M. Robinson, had with you today, in reference to the file history I ordered about two months ago of Application # 08 / 623, 528 patent # 6, 128, 004, (Virtual Reality Glove Sysyem with fibrac Conductors, the Pinch Glove).

Inventors : Ian E. McDowall, Palo Alto, Mark T. Bolaras, Mountian View, Russel c. Mead Jr. San Franisco, Christan Greul, Boulder Creek, all of California.

You stated that the file history is over 400 pages, that I need to send an-*other forty ($40.00) more dollars to cover the cost of 100 additional* pages, a total of 500 pages.

Enclosed is a check in the amount of forty dollars to cover the cost.

Please mail the file to me as soon as possible to 8631 Griggs,

Det. MI 48204.

If you have any questions, or need more information, feel free to call me in Detroit at (313) 491-5212.

Thank you very much " for your help, God Bless you ".

Very truly

"S/_____"

Rosa Robinson

APP. 108

UNITED STATES DEPARTMENT OF COMMERCE

UNITED STATES DEPARTMENT OF COMMERCE

Patent and Trademark Office

ASSISTANT SECRETARY AND COMMISSIONER

OF PATENTS AND TRADEMARKS

Washington, D.C. 20231

ROSA M. Robinson

DETROIT, MI 48206

June 13, 2001

This is to inform you that fulfillment of your request for the following document (s) in your order dated 04-03-2001 will be delayed :

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